

No. 8818

Supreme Court of Illinois

Thomas M. McDonald

vs.

C. T. Wilkie, et al

Summons

Thomas W. McDonald
vs ³/₄ Inspar
Carter Wilkey et al

In the Jefferson Circuit
Court W.
To the August Term A.D. 1850
executed by reading to Wm
Pruett at Louisville and
Young on the 16th M
served on Wilkey

May

Sherriff's fee	
Serving Summons on B.	\$1.50
Returning Summons	12 1/2
8 miles travel	200
Total amt.	\$3.60

Wm Chairstain
Sherriff J. C. M

John W. McDonald

V. D. 1850

Wm. J. C. M

return to our said court, as the law directs.

a plea of

next to answer

in Mount Vernon on the

county, on the

it to be returned

Mc

COCKLEY

THE PEOPLE

County

Sherriff

County

County

County

County

County

Circuit Court Summons.—PIERCE & GOESSMAN, Printers, Benton, Franklin County, Ill.

State of Illinois, } ss.
Jefferson County. }

THE PEOPLE OF THE STATE OF ILLINOIS, TO THE SHERIFF OF SAID
COUNTY GREETING:

We command you to Summons,

if to be found in your county, personally to be and appear before the Circuit Court of said
county, on the first day of the next term thereof, to be commenced and holden at the court house

in Mount Vernon on the

next, to answer

a plea of

that Monday of the month of August
Thomas McDonald

to

to

two

damage of

two thousand dollars

as is alledged, and hereof make due

return to our said court, as the law directs.

IN testimony whereof I have hereunto set my
hand, and affixed the official seal of said
court at office in Mount Vernon, the

for day of *May*

A. D. 1850

John Wilbanks, clerk.

By J. W. Preston H.C.

Pleas of a Circuit Court begun and held at
the Court House in the Town of Mount Vernon, County of
Jefferson and State of Illinois, at the ^{May} ~~August~~ Term A.D. 1857
before the Hon. W. A. Denning presiding Judge of the 12th
3rd Judicial Circuit of the State of Illinois

By Be it remembered, that heretofore to wit, on
the 8th day of May A.D. 1857, came ~~Thos M McDonald~~
Walter B. Scotts & Robert T. Wingate Attorneys for
the Plaintiff — and filed the following Declaration
to wit,

Thomas M M Donald } Supreme Court
vs } Nov Term 1857
Carter Wilkey et al } at Mt Vernon

Emor to Jefferson County

I hereby enter my self Security to costs in
the above cause, and agree to pay or cause
to be paid all costs that may accrue in
this action either to the opposite party
or to any of the officers of this Court
Signed at Mt Vernon this 18th of Nov 1857
R T Wingate Esq

State of Illinois } Of the August Term of the Jefferson
Jefferson County } Circuit Court A D 1850

Thomas W. McDonald the plaintiff in this
suit, by Seates and Wingate his Attornies complains of Carter
T. Wilkey, Reuben Lonsberger & John Lowry defendants, defend-
ants in this suit, who have been summoned to answer said
plaintiff in an action of Trespass.

For that the said defendants heretofore, to wit, on the first
day of April, in the year of our Lord one thousand, eight hundred
- red and fifty, with force and Arms, made an assault ^{upon} ~~the~~
the said plaintiff - and beat, wounded and illtreated him so
that his life was endangered - and for that also the said Defendants
heretofore to wit, on the day and year last aforesaid, with force & arms
at the County & Circuit aforesaid, then & there imprisoned - and hinc
said plaintiff kept & detained him, said plaintiff in prison for a
long space of time, to wit, for the space of twenty days thence next
ensuing - And other wrongs the said Defendants then & there
did to the said plaintiff, against the peace & dignity of the People
of the State of Illinois, and to the damage of the said plaintiff
of two thousand dollars; and therefore he brings this suit.

Nathan B Seates and Robert H
Wingate Attornies for plaintiff

August Term 1850

vs
Thomas W. McDonald

against

Barter S. Millican, Reuben

Stromberger & John Lowry

vs
Wm. Grappes & Co. & Co.

Rem. \$

vs
Filed the 8th day of May

A.D. 1850

John M. Sanders Esq.

August Term Jefferson
Circuit Court 1850

Carter Wilkey
Ruben Cronburger
John Coway

Thomas W McDonald

Carter Wilkey one of the said defendants
for himself alone by Raugh & Herss his attorneys
comes and defends the force and ~~my~~ ^{my} wherefore
and says that he is not guilty of the said supposed
trespass above laid to his charge or any or either of
them or any part thereof in manner and form
as the said ~~plff~~ ^{plff} ~~complainant~~ ^{complainant} against him and of this
he puts himself upon the country &c

And for further plea in this behalf in the said
defendant Carter Wilkey by leave of the court &c
as to the assaulting the said ~~defendant~~ ^{plff} in the said
~~plff~~ declaration mentioned and keeping and detaining
him in person the said time in said declaration
mentioned above supposed to have been done by
said defendant says otherwise, because he says that
the said plaintiff ought not have or maintain
his action against him because he says before the
said time when he was on the 18th day of April 1850
in the said defendant had gained a judgment
against ~~him~~ said plff in an action of ass't before
one Ruben Cronburger an acting justice of the
peace in and for said county duly elected and qual-
ified as such, for \$99.99 and costs in the said
Cronburger then and there having full power &

authority to enter up such judgements - and that he
this defendant made oath before Rubin Lionburger
that he (this defendant) truly believes that Thomas W
McDonall (1st Plaintiff) to be able to pay said judgement
and withholds his money and seizes his property from
the officer so that the debt cannot be paid. he said
Rubin Lionburger as Just Justice of the Peace then
& then having full power and authority - he administered
said oath and demanded an execution against
the body of 1st Plff, which he lawfully might for
the cause aforesaid which is the supposed Dispar
in the introductory part of this plea mentioned
and when the said plff hath above complained
him this debt And that the said debt Carter
Wilkey is ready to verify wherefore he prays
Judgt if the 1st plff ought to hear or maintain
his aforesaid action against him &c

Baugh & Hickers
Attys for C Wilkey

August Term of the Jefferson
Circuit Court 1857

Carter Wilkey
John Goring
Ruben Gouberger
vs
Thomas W McDonald

Ruben Gouberger one of the defts
by W Baugh his attorney, comes and defends the
force and injury where Jo and says that he is
not guilty of that supposed trespass above laid to his
charge, or any or either of them, or any part thereof
in manner and form as the said plaintiff
hath above charged above complained against him
and of this the said defendant puts him self upon
the country &c

W Baugh atty
for Ruben Gouberger

And for further plea in this behalf the said defendant
Ruben Gouberger (as the said assaulting the said
plaintiff in said declaration mentioned, and
kneping and detaining him in person the time
in said declaration mentioned, above supposed
to be done by said defendant) by leave Says
allege on behalf, he says that the said plff-
ought not to have or maintain his aforesaid
action thereof against him, because he says before
the said time when Jo do not on the 18th day of April 1850
in the said defendant was an acting justice of the
peace in and for the said county, duly elected and
qualified as such, and that before the said time
when he in an action of debt wherein Carter Wilkey
was plaintiff and Thomas W McDonald said plaintiff
was defendant, said parties plaintiff and deft

appearing to said action before said defendant
Ruben Cronburger acting as such Justice of the Peace
When and where the plaintiff in said action Carter
Melby recovered against the said diff^s in said
action Thomas W McDonald before this defendant
Ruben Cronburger a judgment for \$99.99 and the costs
of said suit. Said Justice of the Peace then & there
having full power and authority to enter up said
Judgment. That on & to wit the 18 day of
April 1850 said Carter Melby made oath before
said Ruben Cronburger said defendant acting as such justice
of the Peace that he verily believes ~~that~~ Thomas W
McDonald to be able to pay said judgment, withholds
the money or seizes the ^{property} ~~money~~ from the officer so that
the debt cannot be paid, and demanded an execu-
tion against the body of said Thomas W McDonald
wherefor said Ruben Cronburger then and there being
such Justice of the Peace and having full power and author-
ity issued an execution against the body of the said Thomas
W McDonald (the plaintiff in this suit) and delivered said
Writ to ^{one} ~~the~~ ^{agent} John Army then and there being one
of the ^{constables} ~~constables~~ of said County duly elected and qualified as such,
to execute, as he lawfully might for the causes
aforesaid which is the supposed trespass in the in-
-tervening part of this plea mentioned and whereof the
said plaintiff hath complained against the said
defendant Ruben Cronburger.

And this the said defendant is ready to verify
wherefor he prays Judgment of the said plaintiff
ought to have or maintain his aforesaid action
thereof against him &c

D. Bough atty
for R Cronburger

August Term Jefferson
Circuit Court 1850

Carter Helkey &
Ruben Gionburger
John Lowry

Thomas W. McDonald

John Lowry one of the defendants in this
Cause by D. Baugh his attorney comes and defends the
force and injury where he and says that he is not
guilty of the said supposed trespass above said Whiskey
or any or either of them or any part thereof, in manner
and form as the said plaintiff hath above complaint
aimed against him and of this the said defendant
puts himself upon the country &c D. Baugh atty
for John Lowry

And for further plea in this behalf he the said John Lowry
ad to the said ^{assaulting} ~~assaulting~~ said plaintiff in said
declaration mentioned and striking and detaining
him in prison the said time in said declaration
mentioned above supposed to have been done by said
defendant by leave ~~of~~ &c says action now begun
he says that the said plaintiff ought not to maintain his
his aforesaid action against him at the time he the the
said defendant was an acting constable in and for
the said county duly elected and ^{qualified} ~~qualified~~ as such and
just before the time he is not on the 18th day of April 1830
one Carter Helkey sued and prosecuted out of the office of one
Ruben Gionburger who was then an acting justice of the
peace in and for said county duly elected and qualified
as such a certain writ called a capias ad suspensum
in damnum against the said plaintiff and named May
Constable of said county and commanding that of

the goods and chattels of Thomas W McDonald
(said plaintiff) You came to make the sum of \$99
99 cents debt and costs which Carter Wiley lately
recovered before me (Sd Court) in a certain plea against
said Thomas W McDonald and in default thereof You
take the body of the said Thomas W McDonald and him
safely convey to the jail thereof and the jailor of said
county is hereby commanded to receive ~~and~~ ^{safely} and safely
keep said Thomas W McDonald until he pay or
satisfy said debt and costs or be otherwise discharged
by due course of law. Which said warrant was
signed & sealed and returned by said Justice in having
full power and authority to issue said writ, which writ
afterwards to wit on the 18th day of Aprile 1850 at the county
aforesaid was returned to said defendant ^{to be executed} in due form of
law by virtue of which said warrant ^{the} said defendant
as such constable as aforesaid ^{of the writ} to wit on the day and
year in the said declaration mentioned being the said
time when he within the county aforesaid he said plaintiff
^{having failed} refused to render up property to satisfy said debt and
costs, gently laid his hands upon him the said
plaintiff to take and arrest him ~~the said~~ by virtue of
said writ and warrant and did then and there arrest
and take into ~~possession~~ custody by virtue of said writ
and warrant and keep and detain him in custody &
by virtue of said writ and warrant convey said
plff to the jail of said county and there & there deli-
-vered said plff to the jailor of said county whose
duty was by said writ commanded. Which on the supposed
trespass in the introductory part of the plea mentioned
and which the said plaintiff hath above thereof complained
against him and that he is ready to verify wherefore
he prays judgment of the said plff, ought to have or
maintain his said action against him &c

W Bough attorney
for John Lowrey

Thomas W McDonald
 against
 Carter Wilkey et al

Trespass
 August Term of Jefferson
 Circuit Court A D 1850

And the said Plaintiff comes & for replication
 to the plea by the said Carter T. Wilkey, secondly pleaded, says
 "preclude now", because he says that the said plea & the matters
 and things therein pleaded and set forth, in manner & form as therein
 contained, are not sufficient in law, to bar the said Plaintiff
 from having and maintaining his action aforesaid, and he is not
 bound by the laws of the land to further reply to the same — And
 this he is ready to verify — Wherefore &c

Seales & Wingate for Plaintiff

Thomas W McDonald
 against
 Reuben Lientberger et al

Trespass
 August Term Jefferson Circuit
 Court A D 1850

Plaintiff comes and replys to Lientberger's
 second plea, with same general Demurrer above —
 This he is ready to verify: Wherefore &c

Seales & Wingate for Plaintiff

Thomas W McDonald
 against
 John Lowry et al

Trespass
 August Term Jefferson Circuit
 Court A D 1850

Plaintiff comes and replys to Lowry's second
 plea, with same general Demurrer as above, and thus he is
 ready to verify — Wherefore &c

Seales & Wingate for Plaintiff

August Term of Jefferson
Circuit 1830

vs
Thomas McDonald

vs
Melkey, Lamberger & Lowry

Defendant to second plea
of each defendant

Filed the 23rd August 1830

John Willbanks
Clerk

At the August Term of the Jefferson Circuit
Court A. D. 1857 the following order was made
in words ~~and~~ figures &c

of Thomas H. McDonald }
vs }
Carter Wilkey et al } Trespass vi et armis

This day again came
said parties by their Attornies — And the
Plaintiff having filed his Demurrer to
the plea of Defendants — The Court being
sufficiently advised, overruled said Demurrer

Thos W McDonald
vs
Carter Wilky

August Term Jefferson Circuit
Court 1850

And the said plff comes and for ~~separate~~
to the plea by the said Carter Wilky second pleaded, says
preclude now, because he says before the rendition of the
2^d judgment & plea mentioned to wit on the 28th day of
April 1850 that Carter Wilky made complaint on oath
before the 2^d diff Lionburger and on the 9th day of April
aforesaid caused a writ of attachment ^{in said} ~~in said~~ upon said
Complainant on oath to be issued by the 2^d Rufus Lionburger
an acting Justice of the peace then & there duly qualified &
acting as such, and who then & there had complete power
and authority to issue the same against as much of the
personal property of the said plff, as should be of such
value as to satisfy to said Wilky the sum of \$99.99 cents
and such personal estate, ^{so attached} to secure and so to provide
that the same might be liable to other proceedings accord-
ing to law before said Lionburger, as such justice of the peace
aforesaid &c, which said writ of attachment so issued
was amount to say Constable of Jefferson County to execute
and which said writ of attachment was to wit on the
10th day of April 1850. Sent into the hand of the act John
Gorouy who was then & there an acting Constable of
County to execute. Plaintiff says that afterwards on the
10th day of April 1850 the said John Gorouy as such const-
able aforesaid served and took under and by virtue of
said writ of attachment one roan mare of great value, to
wit of the value of \$75, one Brown horse of great value to wit
of the value of \$75 one bridle and saddle and one sheep
skin of great value to wit of the value of \$25, and afterwards
to wit on the 13th day of April 1850 said Constable
brought said writ upon and took one must of great
value to wit of the value of \$25. all which several horses
bridle saddle sheep skin and must were taken as shown

the property of said Plaintiff and amounting in the
aggregate to great value to wit of the value of numerous
dollars, and more than enough to satisfy and pay
said debt of \$99.99 cents in said writ mentioned and which
property of said Plaintiff and so by said writ attached
John Corvey took into his possession and carried away
from and out of the possession of said Plaintiff. Plaintiff
further says that at the time of rendition of said judgment
in said plea mentioned and at the time issuing said capias
against the body of said Plaintiff to wit on the 10th day of
April 1850 the said property so bound on by writ of
attachment to wit, two horses one bridle & saddle one sheep
skin and one trunk the property of said Plaintiff
still remained in the hands and possession of the
John Corvey as such Constable as aforesaid subject to
sale to satisfy said debt of \$99.99 cents aforesaid and dis-
posed of by said Constable. Plaintiff further says that on
the said 10th day of April 1850 and at the time of issuing
said writ of capias and the assault and imprison-
ment &c. in said plea of declaration mentioned, no
execution against the goods and chattels of said plff
or order of sale of the property so attached levied upon
and taken by, upon and under said writ of attachment
had been been issued upon the judgment so rendered
in said plea mentioned and that the said plff is ready to
satisfy wherefore the said Plaintiff prays judgment
and his damages by him sustained by reason of the
committing of the said trespass to be adjudged to him &c

Deatus & Wungah

for plff

Inspas
Thomas W McDonald August Term
Carter Wilky et al } JEFFERSON Co. Cir Court 1857

And the 2^d plff comes
and for replication to the 1st plea by the said.
Ruben Lionburger secondly pleads by Bickner
now because he says he says before the mis-
tion of the said judgment in said plea men-
tioned to wit on the 18th day of April 1858 the
said Carter Wilky in plea mentioned before the
said Just Ruben Lionburger and on the 9th
day of April 1858 the said Carter Wilky caused
a writ of attachment in said Court upon said com-
plaint or oath to be issued by the said Ruben
Lionburger Just a justice of the Peace then & there
only qualified and acting as such and who then &
then had competent power and authority to issue the
same against so much of the person or estate of
the of the said Plff as should be of sufficient value
to satisfy the said Carter Wilky \$99 99 cents and
such personal estate as attached to to secure and
provide that the same might be liable to further
proceedings there according to law before said
Lionburger as such justice of the Peace aforesaid
where said writ of attachment so issued was and
any constable of Jefferson County to execute and
where said writ of attachment was afterwards
to wit on the 10th day of April 1858 the said
John Lowry as such constable lined and took
under said ^{return of} writ of attachment one mare
man of great value to wit of the value of \$45-
one brown horse of great value ^{& sheep skin} of the value of \$75-
one saddle and saddle of great value to wit of the value of
\$25- and afterwards to wit on the 10th day of April 1858
\$25- one trunk of great value to wit of the value of \$25-

Carter T. Wilkey
John Lowry and
Reuben Lumberger

May Term of Jefferson Circuit
Court A.D. 1857

And the said Defendant Carter
T. Wilkey, comes and defends & and says that
the Replication of said plff. to the plea of said Defendant
is insufficient in law. and that defendant is not
bound to answer. And this he is ready to verify.
Whereupon he prays judgement &c.

W. Baigh Atty

May Term Jefferson Circuit
Court A D 1851

Charles Wilkey
Burr Longbruger
John Conway
vs
J W McDonald

And the said John Conway comes
and defends &c And say that the replication of
of said plaintiff to the plea of said deft is not
sufficient in law and that deft is not bound to
answer and this he is ready to verify

Wherefore he prays judgment &c

W B Angus atty

Mr Donald

W. H. P. D. L.

Rejoinder

Filed May 13 1857

John Willcutt
OK

May Term Jefferson Circuit
Court A D 1857

Carter Wilkey
John Lowry
Anten Louburger
vs
Thos W McDonald

And the said defendant Carter Wilkey
as to the said replication of the said Plaintiff
to the said plea of the said defendant saith that
said Plaintiff ought not by reason of anything
by him in that replication above alleged to
or maintain his aforesaid action against him
the said defendant in respect to the said
supposed trespass in the introductory part
of the declaration mentioned because he says
that at the said term when said defendant
John Lowry so being such constable aforesaid
had not taken and then had in his possession
under and by virtue of said attachment of the
proper goods and chattles of said
Thomas W McDonald sufficient to pay costs
and discharge the debt and costs of said Judgment
out in manner and form as is mentioned
in said replication.

And thus the said defendant
pray may be enquired of by the
Court.

Baugh Hooks and
Montgomery for defft

May Term Jefferson Circuit
Court A D 1857

Carter Melby
John Young &
Ruben Louburger
vs
Thos W McDonald

And the said defendant Ruben
Louburger as to the said Replication of said
Plaintiff to the said plea of the said difft Saith,
that said plaintiff ought not by reason of anything
by him in that replication above alledged to have
or maintain his aforesaid action against him
the said defendant in respect to the supposed
trespass in the introductory part of the said plea
and in the declaration mentioned, because he
saith at the said time when ye said defendant
John Young so being such Constable aforesaid
had not taken and then had in his possess-
ion under and by virtue of said attachment
of the proper goods and chattels of the said Thos
W McDonald sufficient to pay satisfy and dis-
charge the debt and costs of the judgment in
monar and form as is mentioned in said
replication And of this said defendant pentstums
-self on the County

A Bough

for diff

Wm. M. Davis

is
Wm. M. Davis

Reprinted

2nd May 1853

May Term Jefferson Circuit
Court A D 1857

Carter Wilkey
Ruford Lionberger
John Lowry
vs
T W McDonald

And the said defendant John Lowry
as to the said replication of the said ~~defect~~
to the said plea of said defendant saith that the
said plaintiff ought not by reason of anything
by him in that replication above alleged to have
or maintain his aforesaid action against him the
said defendant in respect to the said supposed
trespass in the introductory part of the plea
and on the declaration mentioned because he
saith that at the said time when &c said def^t
John Lowry so being said constable had not taken
and then had in his possession under and by
virtue of said attachment of the proper goods and
chattel of Thomas W McDonald sufficient to
pay satisfy or discharge the debt and costs
of the judg^t in manner and form ~~is~~ is mentioned
in ~~the~~ Replication

And of the said def^t puts himself out of the
County

W T Baugh atty

Wm W McDonald }
vs }
Carter McKelister } Trespas

And now again the said plaintiff
by Scates & Mungate his att^{ys} comes and for surmounter to the several
separate rejoinders of the said defendants to the replication of the
said plff in that behalf of the pleas of the said defts^{es} and for
surmounter the said plaintiff says proceeds now. because
he says the matters and things set forth and alleged in
the said several rejoinders of said defts^{es} respectively are
not sufficient in law for them the said defendants to main-
tain their defence nor to answer the said replication
and to bar and preclude the said plaintiff from bringing &
maintaining his action aforesaid - and he is not bound
by the laws of the land to answer the same - and said plff
now sheweth down for special causes and shews to the court
the following. 1st That said rejoinders respectively in the
introductory part sheweth purports to answer the whole of the
replication wherein fact it does not answer the non-
assessing of execution nor order for sale of goods attached

I said rejoinders respectively fail to answer whether a
Capias ad faciendum has not been issued without any
fofa or execution ever issued on said judgement

3rd Said Capias was issued - and no order of sale
had just ever issued for the sale of the goods attached
which is not answered by either of the rejoinders
And for other reasons aforesaid

Wherefore he prays judgment &c

Scates & Mungate for plff

Thomas W McDonald
Carter Wilkey et al

Trespass

And now again comes the
said Plff. Thomas ^{W McDonald} and for surrejoinder to the rejoinder
of the said defendant Carter Wilkey says preliminarily
because he says that the said rejoinder of the said Wilkey
to the replication of the said Thomas in this behalf and the
matters and thing therein contained are not sufficient and he
is not bound by the laws of the land to answer the same
because he says that the said rejoinder does not transverse
answer in or bring the allegation in plaintiffs replication
that no execution against the goods had now been issued
previous to the said Capeas in execution mentioned in defen-
dants plea in this behalf and because the said rejoinder
does not transverse answer or deny that the allegation
in the said replication of plaintiff - and ^{the} said rejoinder
does not deny ~~the~~ ^{by} ~~the~~ attachment and that said
goods so seized on still seized on still then and there
to wit on the 19th day of April 1857 still remain
in the hands of the constable unsold or otherwise disposed
of and all the ~~plff~~ is ready to verify &c

Deatus & Hungate for plff

at the May Term of the Jefferson Circuit
Court A. D. 1857 the following orders were
made, in words, figures &c - to wit -

vs
Thomas W. McDonald

vs
Lester Wilkey et al

Trespass vi et Armis

vs
This day again came
the parties by their Attornies - And the said
Defendants filed their Demurrer to the Plaintiffs
Replication; the Court being sufficiently
advised in the premises, overruled the same - Whereupon
the said plaintiff asked judgement by default
to a part of his Replication, alleged to be
unanswered by rejoinder - the Court
being fully advised in the matter ~~to~~ dis allowed
the same - The plaintiff thereupon, Demurred
to the Defendants rejoinder, and asked default
on a part of his Replication, alleged to be un-
answered by the Defendants rejoinder - the Court being
well advised in the premises, overruled the plaintiffs
motion for judgement by default, and sustained
the plaintiffs Demurrer to rejoinder, with leave to
amend - The said Plaintiff thereupon Demurred
to the amended rejoinder - the Court being sufficiently
advised in the premises sustained said Demurrer, with leave
again to amend - Whereupon the Plaintiffs Demurred
a second time to the second amended rejoinder -
The Court being advised in the matter overruled the
same - The said Plaintiff then stood by his Dem-
urrer - the Court being well advised, in the premises
overruled said Demurrer - And it is further considered
by the Court that the Defendants recover their Costs
in this behalf expended

Thomas W. McDonald
against
Carter J. Wilkey et al

May Term A D 1837

Be it remembered that on the
13th day of May the Defendants filed their separate rejoinders
herein to the Replication of said Plaintiff, which said rejoinders
respectively are in substance, and to the effect following,
that is to say

Carter Wilkey
John Lowry
Reuben Sunbeyer

May Term Jefferson Circuit Court
A D 1837

ats
by Thomas W. McDonald

And the said Defendant Carter J.
Wilkey, as to the said Replication of the said Plaintiff, to
the said plea of said Defendants - saith ^{that} said Plaintiff
ought not by reason of anything, by him in that Replication
above alleged, to have or maintain his aforesaid action
against him the said Defendant, in respect to the said
supposed Trespas in the introductory part of the Declarat-
ion mentioned, because he saith that at the said time
when H. - said Defendant John Lowry, so being Con-
- stable aforesaid had not taken and there had in his
possession, under and by virtue of said Attachment of the
proper goods & Chattles of said Thomas W. McDonald, one
brown horse of the value \$75⁰⁰ - one roan mare
of the value of \$75⁰⁰ - one bridle, saddle & sheep-skin
of the value \$25⁰⁰ and trunk of the value of \$25⁰⁰
Nor had said John Lowry, so being such Constable,
taken of the proper goods & Chattles of said Thomas W.
McDonald by virtue of said Attachment, sufficient to
pay, satisfy and discharge the debts and Costs of the
judgement, in manner and form as is ~~required~~ mentioned
in said Replication

And thus the said Defendant, prays
may be inquired of, by the Country

Baugh, Hicks & Montgomery
for Defendants

Carter T. Wilkey
John Lowry &
Reuben Seiberger
vs
Thomas W. McDonald

May Term Jefferson Circuit
Court A.D. 1831

And the said Defendant Reuben Seiberger, as to the said Replication of the said Plaintiff to the said plea of said Defendant - saith that said Plaintiff ought not by reason of anything by him in that Replication, above alleged, to have or maintain, his aforesaid, action, against him the said Defendant, in respect to the said supposed Trespass, in the introductory part of the said plea, and in the Declaration mentioned, because he saith that at the said time when Al. said Defendant John Lowry, so being such Constable, as aforesaid, had not taken and there had in his possession, under and by virtue of said Attachment, of the proper goods and Chattles, of said Thomas W. McDonald - one brown horse of the value of \$75 too - one roan mare of the value of \$75 too - one bundle - saddle & shupsteev, of the value of twenty five \$25 too - and one trunk of the value of \$25 too - Nor had said Lowry, so being such Constable, taken of the proper goods & Chattles of said Thomas W. McDonald, by virtue of said Attachment sufficient to pay, satisfy and discharge the debt & Costs of the judgement in manner and form as is mentioned in said Replication - And of this said Defendant puts himself upon the Country.

W. Baugh for Deft

Walter S. Wilkey
John Sowers and
Newben Stenberger

May Term of the Jefferson
Circuit Court A.D. 1857

vs
Thomas W. McDonald

And the said Defendant John Sowers, as to the said Replication of the said Plaintiff to the plea of said Defendant - saith that said Plaintiff ought ^{not} by reason of anything, by him in that Replication, above alluded, to have, or maintain, his aforesaid Action, against him the said Defendant in respect to the said supposed Trespass, in the introductory part of the said plea - And in the Declaration mentioned, because he saith that at the said time when he said Defendant - John Sowers, so being said Constable, had not taken and there had in his possession, under and by virtue of said Attachment of the proper goods & Chattles of said Thomas W. McDonald - one roan mare of the value of \$75 too - one brown horse of the value of \$75 too - one bridle, Saddle & sheepskin of the value \$25 too - and one trunk of the value of \$25 too. Nor had said John Sowers so being said Constable taken in his possession, by virtue of said Attachment, all of the proper goods & Chattles of said Thomas W. McDonald sufficient to pay, satisfy and discharge the debt and Costs of the Judgement in manner and form as is mentioned in said Replication. And of this the said Defendant puts himself on the Country.

D. Baugh Atty. for Dft

Whereupon the said Plaintiff moved the Court for a default on the unanswered matters of the Replication alleged, not to be answered, admitted, traversed or denied, by said respondents respectively - which

^{for a default}
Motion, the Court overruled, — to which decision
of the Court in overruling said Motion & refusing
to grant said default. Said Plaintiff then and
there excepted

Afterwards, on the same day, said
Plaintiff tendered his Remuner to said referees, resp-
-ectively — And again moved the Court before filing the
same, to enter a default against Defendants for all
the matters and things in Plaintiffs Replication, —
which are alleged not to be answered, traversed, ~~and~~
admitted or denied, by the said referees of said
Defendants respectively — which said last Motion
for a default, the Court again overruled & refused
to grant a default — to which decision of the Court
in overruling said Motion & refusing to grant the default
It asked — the said Plaintiff then and there excepted

The Plaintiff now here tenders his bill of exceptions
and prays the same may be read and allowed —
which is done accordingly
J. S. Marshall *(seal)*

Thomas W McDonald & August Leim Jefferson
vs Circuit Court AD 1850
Carter Wilkey et al

We do hereby enter ourselves security for
costs in this cause and acknowledge ourselves bound to
pay or cause to be paid all costs which have accrued
or may accrue in this action either to the opposite
party or any ^{of the} officers of this court in pursuance of the
laws of this state

This 2nd day of August AD 1850

W A Wilkey (sub)
W B Johnson (sub)

August Term Jefferson Circuit
Court AD 1850

Thomas W McDonald

Ex parte

Carter Wilkey et al

Personally appeared before me Carter
Wilkey one of the defendants in the above entitled
Cause and made oath that he is informed and
verily believes that Thomas W McDonald the plaintiff
in said cause is unable to pay the costs in this
suit, should judgment go against him, and that
the officers of this court and said defendants
will be in danger of losing their costs unless
he be ruled to give security for costs which it
def prays may be done

Sworn to and subscribed
before me this day of
Augst 1850

Carter Wilkey

John Wilbanks CL
By J D Preston CL

T W McDonald

P W May star

apt. recy for
Costs

Filed on the 20

Day of August

1850

John W. H. H. H.
clerk

Thomas W. McDonald

at
Barter T. McKay

Assumpsit } August Term Jefferson
Circuit Court 1850

Thomas W. McDonald, defendant, being

first duly sworn, deposes & says that he cannot, proceed in this cause on account of the absence of material witnesses, to wit, Joseph M. Coy, Sr. & Jr. of Hamilton County - Wallace Lambell, Mrs. Miller, Thomas Dixon of same County - Joshua Blake of Hamilton or Franklin County - George Smith of Jefferson County, Abel Allen, J. A. Wilbanks W. A. Wilbanks of same County - Jacob Blocker, & Catherine Blocker of Franklin County, and by each of whom he expects & believes he can prove different items of his set off, in this cause, but he is not able to state, what particular items, nor all the items, he can prove by each witness, as the account is long, containing many items - but all together, he expects & believes he can prove an indebtedness from plaintiff to defendant, for a greater amount than the defendant is or may be owing to plaintiff. He further states that he had Subpoenas issued on the 4th July last for John M. Coy, Sr. & Jr., Thomas Dixon, Jacob Blocker & Wallace Lambell & others none of which have been served because defendant was informed and believes, that plaintiff filed an order and declared his intention, and so directed, that this suit should & would be dismissed by him & not prosecuted any further - and on which account, and that only, defendant did not have any of those Subpoenas above, served on his witnesses - nor take any further steps to prepare himself for trial in this cause, believing the same would be dismissed, at this term by plaintiff - And he further states that he never heard, nor did he know anything, to the contrary from plff., nor any other person, nor from his affiant's own Attorney or Attornies - and that plaintiff would still, to prosecute this suit, - until he came to counsel on ~~Wednesday~~ ^{Thursday} Munday, the first day of this term. He states that his want, of preparation for trial, is not owing to any negligence on his part; but solely to the cause aforesaid -

that he cannot proceed safely to trial, without said witnesses
who are not in attendance, at this Court - except Abel Allen
so far as he ~~knows~~ is informed, and that his application
is not made for delay, but that justice may be done - and
he expects & believes, he can procure their attendance, by the
next term of this Court, to which time he prays that this
cause may be continued, generally for the causes & reasons
aforesaid - And further saith not

Thomas W. McDonald

Subscribed & sworn to before
me this 24th day of Aug^r. 1850

John Williams Clerk

By F. B. Preston 10

Sept^r Court's Court Day's Term 1852

Thomas W. McDonald

against

John J. Wilkey

Applicant for

continuance

State of Illinois
Jefferson County

I John Wilbanks Clerk of the Circuit Court in and for the said County of Jefferson, hereby Certify that the foregoing is a true Copy of the record filed in my Office in a cause wherein Thomas W. M. Donald is plaintiff and Carter T. Wilkie and others are Defendants. In witness whereof I have hereunto set my hand and affixed the seal of my Office, this 15th day of November 1851

John Wilbanks Clk
By I B. Tanner D.C.

Thomas W. M. Donald) November term 1851
v
Carter T. Wilkie, John) Error to Jefferson
Lowry & Reuben Lyubberger)

And now comes the said plaintiff by Seates and Migate, his Counsel, and says that in the record of proceedings, and in the rendition of the judgment in this cause there is manifest error: viz:
First. The Court erred in sustaining the depts. pleas respectively & overruling demurrers
Second. The Court erred in sustaining the depts. rejoinders respectively & overruling demurrers
Third. The Court erred in refusing to give judgment of default, on matters not answered by the pleas and rejoinders - and overruling said demurrers.

Fourth. The Court erred in rendering judgment against plaintiff & in favor of Depts.

Wherefore for these & other errors apparent in the record of proceedings in manner & form as the same are set forth, he prays that the same may be reversed annulled, & for nothing ordered, & that the cause be remanded &c & for his costs &c.

W. B. Seates & R. A. Migate Counsel for plff

For order
D. B. Smith for depts.

⁴⁴ Thomas H. McDonald
⁴⁴ Carter Hickey et al

Chrg. fees for record to Tanner
\$8.45

McDonald
vs
Hickey

8818