

14188

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

# Supreme Court of Illinois

Clark

---

vs.

Mills.

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No 18

November 1852

Newton D Clark

vs

Jonathan C Mills

Error to Paper

Opinion by

Justice C. D.

14188

Judgment Affirmed

Golconda Ill Oct 28 1857

Sir

I enclose you the copy of the record in the case of Newton D Clark vs Jonathan C Willis taken from the Pope Circuit Court to the Supreme Court by bill of exceptions, — R. J. Wingate Esq is employed to attend to the case, please file the papers immediately. I enclose you \$500

Very Respectfully

Geo. B. Ransom

Clk Supreme Court  
W. Vernon M

No 18

A. D. Clark

by

Jonathan C. Mills

Pope County

was issued and came to the hands of the defendant who was Sheriff of Pope County and who as Sheriff sold the tobacco on the 7th March 1859, that the tobacco weighed 150 lbs and was worth \$4.50 <sup>or \$5.00</sup> per cent; that Water, the vendor took up some \$60 or \$70 in goods in Clark's Store, Clark was to take the tobacco to the town market sell it and give Water credit for the price in the said market.

Water with the permission of Clark contracted the tobacco to one Jones and one Little before he delivered it to Clark but these contracts were never perfected by payment of the price or the delivery of the tobacco - There was ~~some~~ evidence that when Water delivered the tobacco to Clark's Clerk he said McCoy had a judgment against him and that he wished the tobacco shipped as soon as possible.

I insist that the property in the tobacco passed to Clark by the delivery on the 20th day of Feb'y 1859, and that the act of the deft, in taking and disposing of the same on the 22nd day of the same month was a trespass for which he is liable. It appears from the evidence that the parties intended the sale to be complete and the fact that Clark was to sell the tobacco in the town market will not affect Clark's right. Riddle v Varnum 20 Pickering 283. McComber v Parker 13 Pickering 182.

J. G. Davis

Newton S Clark  
4  
Jonathan C. Willis

Error to Pope

This was an action of trespass commenced in the Pope Circuit Court at the April Term AD 1854.

The declarative alleges that the defendant took and converted a hogshhead of tobacco the property of the p<sup>ff</sup> on the 21<sup>st</sup> day of July 1853 to p<sup>ff</sup> damages \$100. - There was a plea of the general issue and a special plea plea of license numbered 4 in the record. There were three pleas besides the general issue and the 4th plea, there were demands to and the demands sustained by the Court.

To the 1st and 4th pleas replications and issues. The Cause was submitted to the Court and judgment rendered for the deft and that the deft pay the costs &c - A motion was made for a new trial and in arrest of judgment, which were by the Court overruled to which ruling of the Court the p<sup>ff</sup> then and then excepted - and his bill of exceptions was then read then signed and sealed by the Court.

The evidence as preserved in the bill and record shows that the p<sup>ff</sup> contracted with one Water for his crop of tobacco and that a hogshhead of tobacco was delivered in Clarks warehouse in Golconda on the 20th day of July 1853. and that it was received by Clarks Clk the day before the execution

Clark brought an action against  
Mills. It was heard by the court,  
and judgment entered for the  
defendant. The recitation of the  
judgment is signed for error.  
This assignment cannot be  
considered. To reverse a judgment,  
it must affirmatively appear  
that error has been committed.  
Such is not the case with  
this record. The bill of exceptions  
does not purport to contain  
all of the evidence. We, therefore,  
cannot say that the decision  
of the court was erroneous.  
The testimony may have  
warranted the judgment.  
The whole of the evidence  
ought to be incorporated in  
the bill of exceptions, to  
enable this court to review  
the decision of the circuit judge.  
As this is not done, the court  
must intend that the evidence  
was sufficient to sustain the  
judgment. *Harmon v. Thornton*,  
2 *Scammon*, 351; *Nordaw v. Dosh*,  
4 *ibid*, 460; *Bates v. Bulkley*, 2  
*Gierman*, 389; *Grange v. Warrington*,  
3 *ibid*, 299; *Webster v. Enfield*, 5  
*ibid*, 298; *Buckmaster v. Cool*,  
12 *Illinois*, 74.

The judgment is affirmed.

Clark v. Hillis.

Opinion.

Treat.

Pleas had in the Circuit Court  
for Pope County in the State of Illinois  
before the Honorable William H.  
Farrish Judge of the said Court

Be it remembered that heretofore to wit on the  
15<sup>th</sup> day of March A. D. 1854 Newton D. Clark  
by Ramm & Smith his Attorney's filed his dec-  
laration in the Clerk's Office of said Court  
in the words and figures as follows to wit.

State of Illinois  $\frac{1}{2}$   
Pope County  $\frac{1}{3}$  1<sup>st</sup> Set April Term Pope Circuit  
Court 1854.

Newton D. Clark the Plaintiff in this action by  
Ramm & Smith his Attorneys complains of Jonathan  
C. Willis of a plea in an action of trespass. For  
that the said defendant on the 22<sup>nd</sup> day of  
February A. D. 1853, with force and arms at the  
County of Pope and State of Illinois did then and  
there seize a certain hogs head of Tobacco of the  
said Plaintiff, of great value to wit, of the  
value of \$100. and then and there carried  
away the same, and converted and disposed  
thereof to his own use to wit, at the County  
and State aforesaid.

And other wrongs to the said Plaintiff then  
and there did against the peace of the people  
of the State of Illinois, and to the damage  
of the said Plaintiff of \$120. and therefore  
he brings his suit. &c.

Ramm & Smith  
Attys for selfs

whereupon the following summons was issued in  
words and figures as follows to wit  
State of Illinois, Pope County 1<sup>st</sup> Set, The People

Summons

of the state of Illinois to the coroner of said County  
 greeting. We command you to Summon Jonathan  
 C. Willis if 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 holden  
 at the court house in Golconda on the second  
 Monday in April next to answer Newton J. Clark  
 in an action of Trespas on the case, Damages  
 One hundred and twenty dollars as he saith  
 and have you then there this writ:

Witness John Raum Clerk of our  
 said Court and the Judicial Seal  
 thereof at Golconda this 14<sup>th</sup> day  
 of March A. D. 1853.

John Raum Clk

Return

which said Summons was returned with the  
 following endorsement thereon to wit; "Served the  
 within by reading the same to the said defendant  
 Jon. C. Willis this 27<sup>th</sup> of March 1854.

Robert Kemphill coroner  
 Pope County Illinois "

On the 13<sup>th</sup> day of April A. D. 1854 the defendant  
 by Sloan his attorney filed his pleas as follows to  
 wit;

|                    |                 |               |                  |
|--------------------|-----------------|---------------|------------------|
| State of Illinois  | 1 <sup>st</sup> | April Term    | Pope             |
| Pope County        | 3 <sup>rd</sup> | Circuit Court | A. D. 1854       |
| Jonathan C. Willis | vs              |               |                  |
|                    |                 |               | Pleas in Trespas |
| Newton J. Clark    |                 |               |                  |

1<sup>st</sup> And the said defendant by Wesley Sloan  
 his attorney comes and defends the free and  
 injury when he and says, that he is not guilty of

= head of tobacco to the said defendant as the said William H Waters tobacco and the said defendant as such sheriff as aforesaid, being informed as aforesaid, levied upon, seized and took the said Hog's head of Tobacco by virtue of the said writ of Execution in the presence and hearing and with the knowledge of him the said Clerk and the said Clerk at the time when he made no objection to said levy seizure and taking of said Hog's head of tobacco & set up no title or claim to the same on behalf of said Plaintiff and this said defendant is ready to verify.

4<sup>th</sup> And for further plea in this behalf the said defendant says Actio Non because he says that he the said defendant is Sheriff of said Pope County in said state of Illinois as aforesaid at the time when he by the leave and license of the said Plaintiff to him for that purpose first given and granted to wit on the 22<sup>d</sup> day of February 1853 at the County aforesaid committed the said several supposed trespasses in the said declaration mentioned, as he lawfully might for the cause aforesaid and this said defendant is ready to verify.

5<sup>th</sup> And for further plea in this behalf said defendant says actio Non Because he says that before said defendant by virtue of said Execution masked alias Hi Fra 161, B. levied upon said Hog's head of Tobacco and seized and took the same in pursuance of said levy as the property of said William H Waters, to wit on the 22<sup>d</sup> day of February 1853 at the County and state aforesaid, the said Plaintiff by the said Floyd his Clerk fully authorized thereto, he the said Plaintiff being then absent from home, showed and pointed out to said defendant the said Hog's head

of tobacco, as the said William H Waters tobacco, whereupon the said defendant then and there in the presence and knowledge of said Clerk peaceably and without force levied said execution upon said Hoghead of tobacco and by virtue thereof seized and took the same in execution as the property of the said William H Waters, which of right he might do, and this he said defendant is ready to verify.

Whereupon the plaintiff by Smith Ramm & Wingate his attorneys on the said 13<sup>th</sup> of April 1854 filed his demand to the 2<sup>d</sup> 3<sup>d</sup> 4<sup>th</sup> & 5<sup>th</sup> pleas of said defendant in words and figures as follows to wit;

Newton I Black

vs

Jonathan C Willis

3  
3  
3

Trespass.

April term of the  
Circuit Court A D 1854

*demand*

And the said plff as to the several said pleas of the said deft by him secondly - thirdly fourthly and fifthly above pleaded, saith that the same or either of them, and the matters ~~and~~ therein contained or either of them in manner and form as the same are above pleaded and set forth (respectively) are insufficient in law to bar or preclude him the said plff from having or maintaining his aforesaid action thereupon against the said deft, and that he the said plff is not bound by law to answer the same or either of them, and this he the said plff is ready to verify, Wherefore by reason of the insufficiency of the said pleas and each of them in this behalf, the said plff prays

Judgment & his damages by him sustained on account of the committing of the said trespass to be adjudged to him ~~and~~

Smith & Ramm & Wingate for self

That the 3<sup>d</sup> plea is argumentative

On Thursday the 13<sup>th</sup> day of April 1854 being the 4<sup>th</sup> day of the term of said court the following proceedings were had in said court to wit:

Newton D. Clark vs Jonathan C. Willis  
Action of Trespas

On this day came the plaintiff by Wingate & Ramm his attorneys, and the said defendant by Sloan his attorney. Whereupon the plaintiff by his attorneys having filed his demurrer to the 2<sup>d</sup> 3<sup>d</sup> 4<sup>th</sup> & 5<sup>th</sup> pleas severally of said defendant, the court after hearing argument sustained the demurrer as to the 2<sup>d</sup> 3<sup>d</sup> & 5<sup>th</sup> pleas, and overruled as to the 4<sup>th</sup> plea, and leave given to withdraw order in demur, and leave to amend. Demurrer to 3<sup>d</sup> plea as amended sustained by the court.

The plaintiff thereupon by his attorney filed the following replication to wit:

Newton D. Clark vs Jonathan C. Willis  
Trespas  
April Term of the Supreme Court A.D. 1854

And the said plaintiff by Wingate his atty, as to the said fourth plea by the said deft above pleaded comes and says ~~procludi non~~ because he says it is not true that the said plaintiff

Replication

5

Plaintiff licensed and permitted the said deft  
to take the said property as in said plea alleged  
& of this he puts himself upon the Country.  
and said defendant doth the like.

Wesley Sloan for defts.

And for further replication to the said fourth  
plea of the said defendant above pleaded the  
said plff comes and says pro claudi nunc because  
he says that before the said defendant sold  
& conveyed said property as is alleged the  
said plff forbade and gave the said defts  
notice not to sell said property and of this  
he puts himself upon the Country.

R. H. Wengate for plff

and the defendant by Sloan his attorney  
filed demurrer to 2<sup>d</sup> replication to said 4<sup>th</sup> plea  
as follows to wit

Jonathan C. Willis

adv.

Newton D. Clark

Jus pafs

And the said defendant says  
that the replications of the said plaintiff  
secondly by him above pleaded to defendant's  
said fourth plea and the matters and things  
therein set forth are not sufficient in law  
for said plaintiff to have and maintain  
his aforesaid action against him, and that  
he is not bound by law to answer the same  
and this he is ready to verify. Whereupon  
he prays Judgment of said plaintiff ought  
to have or maintain his aforesaid action  
against him &c. Wesley Sloan for  
defendants

demurrer  
to  
2<sup>d</sup> Repli:

And on Saturday the 15<sup>th</sup> day of April  
A.D. 1854, being the sixth day of the  
term of said Circuit Court then & there  
held at the Court House in Golconda in said  
Lape County, the following proceedings were  
had to wit:

Newton D. Clark

vs

Jonathan C. Willis } Action Trespas.

On this day came the parties  
by their attorneys. The demurrer to the  
2<sup>d</sup> replication to the 4<sup>th</sup> plea is sustained.

Whereupon the issue is submitted to the court  
the proofs heard and verdict not guilty.  
The plaintiff thereupon motioned the court  
for a new trial, which was overruled. It  
is therefore considered that the defendant  
recover of the said plaintiff his costs and charges  
about his defence in this behalf expended  
and may have Execution therefor.

Whereupon the following Bill of Exceptions  
were filed.

State of Illinois } a part Term Lape Circuit  
Lape County } 3<sup>rd</sup> term Court. A.D. 1854.

Newton D. Clark

vs

Jonathan C. Willis } Trespas.

Trespas.

Be it remembered that when the  
above entitled came on to be tried before the  
Hon. William H. Parrish Judge of the Lape  
circuit court, the issue was submitted to the  
court and the plaintiff introduced as a witness  
William H. Waters, who testified upon the examina-  
-ation in chief as follows "I sold the tobacco  
to

Bill  
of  
Exceptions

to Mr. Clark he was to take it below and what-  
 ever it brought he (Clark) was to discount to me I was  
 to prize it and deliver it in Clarks warehouse in Gol-  
 conday, I delivered the tobacco to Mr. Clark on the 20<sup>th</sup>  
 day of February in the year 1853. the tobacco was  
 the crop of 1852. When I opened an account with  
 Mr. Clark he was to let me have goods on a credit  
 and I was to let him have my tobacco for that year,  
 and Clark was to take the tobacco below and sell it  
 in the lower market and whatever the tobacco  
 brought him he Clark was to allow me a credit  
 on my account with him. The Tobacco weighed  
 1500<sup>lb</sup> and was worth \$450 or \$5. per Hundred  
 pounds."

" Witness Crop Examined

I made an arrangement with Mr. Clark some  
 time in the month of January 1852 to trade with  
<sup>him</sup> in his store, Mr. Clark was to let me have goods  
 on a credit, and I was to raise a crop of Tobacco  
 and prize and deliver the same to Clark and  
 he was to take the same and ship it below and  
 whatever the tobacco brought him, he was to allow  
 me for it, I traded with Clark that season to  
 the amount of \$60. or \$70. I sold the tobacco  
 to Mr. Jones conditionally by Mr. Clarks leave, Mr.  
 Clark told me that money would suit him as  
 well as the tobacco. I did not tell Mr. Jones it was  
 Clarks tobacco. Mr. Jones was to pay part of the money  
 for the tobacco on the day he agreed to come after it  
 and the balance in two weeks. Mr. Jones did not  
 get the tobacco for the reason he did not come for  
 it in the day he agreed to come, but sent after the  
 day had passed. Mr. Clark also authorized me

6  
to sell the tobacco to Mr Settle. Mr Clark was not at home when I delivered the tobacco. Mr Clark's son Daniel received the tobacco. — I don't know that I told Mr Floyd to ship it as soon as he could. I was present at the sale of the tobacco. — I don't think I told Mr McCoy to make the most of the tobacco that it was the last he would ever get.

Witness reexamined in chief  
"While Mr Willis was selling the tobacco Mr Clark notified him that it was his tobacco — Mr Clark had come back from down the river on the day the tobacco was sold, the tobacco was sold in Mr Clark's warehouse, James McCoy bought the tobacco.

The plaintiff then introduced William R Floyd, who testified upon the examination in chief as follows. "I was a clerk in Mr Clark's store, and Daniel H Clark son of plaintiff was also a clerk in Mr Clark's store. I was present at the time the tobacco was delivered by William H Waters in Mr Clark's warehouse Daniel H Clark received the tobacco into the warehouse. — I assisted in rolling the tobacco in the warehouse. The plaintiff was not at home when the tobacco was delivered. — Mr Clark was a dry goods merchant and buyer and seller of produce, he authorized Daniel H Clark and myself to receive produce in his absence. — The tobacco remained in Mr Clark's warehouse until after it was sold. The defendant sold it in the warehouse. I did not stay in the warehouse until it was sold. The tobacco was worth \$5.00 per hundred pounds and was the same tobacco spoken of by Mr Waters to testified

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testified herein. I think that defendant & Mc-  
=boy rolled the tobacco out of the warehouse  
after it was sold, it was taken from the Ware-  
house.

(Witness Cross Examined)

The tobacco was delivered on the 18<sup>th</sup> or 19<sup>th</sup> day  
of February 1853 on Sunday. Mr Clark was a  
dry goods Merchant and dealer in produce.  
Mr Clark was absent at the time Mr Waters  
delivered the tobacco. I was authorized to  
receive any thing brought. - Clark's son Daniel  
received the tobacco, I helped roll the tobacco  
in the warehouse. James Mc'Boy came to Clark's  
store on Monday Evening after the tobacco was  
delivered, and asked me if Waters had a kegshead  
of tobacco there. - I told him that Waters had left  
a 1/4<sup>hd</sup> of Tobacco there, and I pointed it out to  
him. - Mr Willis came next Morning and asked  
me if Waters had a 1/4<sup>hd</sup> of tobacco there I told  
him Waters had left a 1/4<sup>hd</sup> of Tobacco there  
and pointed it out to him. - Waters told me at  
the time he delivered the 1/4<sup>hd</sup> of tobacco that Mc'Boy  
had a judgment against it and to ship it as  
soon as I could. - I told Willis that Waters  
told me that Mc'Boy had a Judgment against  
the tobacco and to ship it as soon as I could

The defendant then offered in evidence the  
following Judgment of the circuit court of  
Lope county " Thursday the 31<sup>st</sup> day of October  
A. D. 1850.

Joab W Mc'Boy & James Mc'Boy }  
vs }  
William H Waters }  
} On this day

William H Waters }  
} On this day

came the parties by their attorneys and submitted  
this cause to the court whereupon on hearing it  
is considered by the court that the plaintiffs re-  
cover of the said defendant the sum of Forty  
dollars, and their costs and charges about their  
suit expended and may have execution there-  
for. — The defendant also offered in  
evidence the following Execution & Endorse-  
ment.

"State of Illinois  
Sole County 1/2 set

The People of the State of Illinois  
to the Sheriff of said County Greeting. We command  
you that of the goods and chattels lands tenements  
and real estate of William H. Waters in your  
county you cause to be made the sum of Forty  
dollars with interest thereon from the 31<sup>st</sup> day of  
October A. D. 1850. until paid which I W. H. of  
M' Coy lately in our circuit court for said County  
recovered against him for debt in an action  
of debt, also twenty two dollars and 60 cents which  
was awarded by our said court to them for  
their costs and charges in that behalf expended  
whereof the said William H. Waters is convicted  
as appears to us of record. And have you the  
money ready at the Clerks Office of our said  
circuit court at Golconda in ninety days  
after the date hereof to render the said debt interest  
and costs as aforesaid. and have you then and  
then this writ.

Witness John Ramm Clerk of our said  
circuit court and the Judicial Seal  
thereof at Golconda this 22<sup>d</sup> day of  
February

February A. D. 1853.

Mr Ramm Clerk "

upon which said execution the following endorse-  
ments appear. " Come to hand the 22 of February  
A D 1853, at 10 Clock P. M.

J. C. Willis Sheriff  
of Pope County

By virtue of the within execution I levied upon  
one hogs head of Tobacco as the property of Wm  
P Waters this 22<sup>d</sup> day of February A. D. 1853.

J. C. Willis Sheriff Pope County

Return - On the 7<sup>th</sup> day of March 1853  
the above property was offered for sale after being  
advertised according to law and was struck off  
and sold to James Mc Coy for the sum of sixty  
dollars this 11<sup>th</sup> day of March A D 1853

J. C. Willis Sheriff Pope Co "

The Defendant introduced Strathie Settle  
Mr Jones, and Henry Glasp as witnesses  
Strathie Settle testified as follows " I was  
present when Mr Willis sold the tobacco. James  
Mc Coy bought it. - Waters said he might make  
much of this for it was the last he would ever  
get.

Mr Jones testified as follows. - " I contracted  
with Waters for a H<sup>d</sup> of Tobacco about the 15<sup>th</sup>  
Feb. - The agreement was positive as to price.  
- I sent the waggon after the tobacco. Waters  
told me that if he did not sell me the tobacco  
that Mr. Clark would ship it for him.

Cross Examined

" I dont know of my own knowledge that the waggon  
went.

Mr Glass testified as follows  
"Mr Willis asked Mr. Clark in my presence about  
three weeks ago if he had not paid the storage on  
that tobacco, Mr Clark said he had.

Cross Examined

"Don't know what tobacco it was they spoke about,  
but suppose it to be the tobacco in question"

After hearing the evidence in this cause the  
court entered judgment for the defendant for costs  
whereupon the plaintiff entered a motion for  
a new trial and in arrest of judgment, which  
said motion the court overruled. The plaintiff  
then and there excepted to the said Opinion of  
the court in entering judgment as aforesaid for  
the following reasons. — 1<sup>st</sup> said Judgment  
is contrary to the evidence in this case,

2<sup>d</sup> said Judgment is contrary to law, 3<sup>d</sup> said  
Judgment is contrary to both law & Evidence

Which said exceptions to the Opinion of the  
court the said plaintiff prays may be signed  
sealed and made a part of the record of this  
cause which is done accordingly

William H. Parson Esq<sup>r</sup>

State of Illinois 7<sup>th</sup> 1866  
Lape County

I John Raum Clerk of the  
Circuit Court of said County do hereby cer-  
tify that the foregoing eight pages contain  
a full and complete copy of the record and  
proceedings in said court, had in the above  
entitled cause wherein Newton D. Clark is  
plaintiff and Jonathan C. Willis defendant

as appears of record and on file in my Office  
In Testimony whereof I have  
hereunto set my hand and the  
Judicial seal of said Court  
at Golconda this 17<sup>th</sup> day of  
October A. D. 1854.

J. R. Ramm Clerk

1st And now on the 4<sup>th</sup> of the Court  
the pff by Davis his attorney  
admits that in the record  
and proceedings of the Court  
manifest error in this - that the  
Court below found in favor of the  
defendant and gave judgment for  
him + against the pff for costs

2 And in refusing to give judgment  
for the pff for the pff in by the law  
of the land judgment should have  
been

3rd In overruling the motion  
for a new trial and in arrest  
of judgment.

At 6 Davis's  
for pff in error  
Found in error  
John A. Logan for aff in error

Plea's

said supposed trespasses above laid to his charge or any or either of them, or any part thereof in manner and form as said plaintiff has above thereof complained against him and of this said defendant puts himself upon the country.

& the plaintiff doth the like.  
Reason & merits for self.

2<sup>d</sup> and for further plea in this behalf said plaintiff says actis non Because, he says that here to fore to wit on the 22<sup>d</sup> day of February A. D. 1853 an Execution marked "Alias Hi Fa 161. B." of that date where in J W & J Mc Coy were plaintiffs and William A Waters was defendant was issued out of the circuit courts of Pope county in the state of Illinois directed to the Sheriff of said County ~~to~~ Execute whereby the said Sheriff was commanded that of the goods and chattels lands tenements and real estate of the said William A Waters in his County he cause to be made the sum of forty dollars with interest thereon from the 31<sup>st</sup> day of October A. D. 1850 until paid which the said J W & J Mc Coy had lately recovered in said circuit court against him the said Waters for debts, also twenty two dollars and 60 cents costs, which said execution came to the hands of said defendant on a certain day to wit the day and year aforesaid, he the said defendant being then and there the Sheriff of the said County of Pope and said defendant as such Sheriff as aforesaid then and there being by virtue of said execution being upon seized and took the said Boys head of Tobacco in said plaintiffs declaration mentioned as the goods and chattels of him the said William A Waters to satisfy said execution which

is the said supposed trespasses complained of  
above by said Plaintiff, and said defendant says  
that the said Hogshhead of Tobacco was then and  
there the property of the said William H. Waters and  
subject to be levied upon seized and taken as afore-  
said, by him as such Sheriff as aforesaid and by  
virtue of said execution as aforesaid to satisfy  
said execution, without this that said Hogshhead  
of Tobacco was the property of said Plaintiff. And  
this said defendant is ready to verify.

3<sup>d</sup> And for further plea in this behalf the said  
defendant says actio Non Because he says wh  
the said Execution Marked Alias Fi Fa 161 B.  
in his said plea secondly above pleaded specified  
came to hands as such Sheriff as aforesaid to wit;  
on the said 22<sup>d</sup> day of February 1853 he the said  
defendant went to the store of said Plaintiff, he  
the said Plaintiff being then and there absent  
from home for several days previous thereto; and  
the said Plaintiff being absent as aforesaid, One  
Williamson R Floyd was then and there the ~~clerk~~  
said Plaintiffs clerk, and as such clerk attending  
to said Plaintiffs business being then and there fully  
authorised in the premises and the said defendant  
then and there enquired from said Clerk of and  
concerning the said Hogshhead of tobacco, and  
thereupon said defendant was informed and given  
to understand by the said clerk that the said  
William H Waters had a Hogshhead of tobacco  
in their warehouse, and thereupon to wit on the day  
and year last aforesaid the said defendant and  
the said clerk went into said Warehouse and the  
said clerk then and there pointed out said Hogsh-

copy of Record &  
proceedings.

Supreme Court  
April Term 1854

Newton D. Clark

vs

Jonathan C. Willis

Filed 31. October

1854. - For paid \$5.00

U. S. District Court

By St. Johnston & Co

Nov 18

Spec. from acct. to 4.50  
entire to the 50  
\$ 5.00