

8508

No. _____

Supreme Court of Illinois

Wm. McBride

vs.

Briscan Rathwell & Co.

71641  7

Plea had before the Honorable Justice
Marlan Widge of the Circuit Court in
and for the fourth judicial circuit
at a circuit court begun and held
at the Court-house in Louisville in
the County of Clay on Monday the 5th
day of October A.D. 1857.

Be it remembered that on 22^d day of April A.D.
1857 a suit was commenced in the Circuit Court
of the County of Clay, on the common law side thereof,
in which John Brisenden, James K. Bothwell &
Garnatiel Haskins on a firm trading and doing
business under the name and style of Brisenden, Both-
well & Co were Plaintiffs and Leamm M'Bride & John
H. M'Bride were Defendants of the proceedings
in which cause and the papers filed therein the
following is a correct transcript

Preise State of Illinois vs Of the May term 1857 of the
County of Clay, Clay County Circuit Court
John Brisenden
James K. Bothwell
Garnatiel Haskins vs
Leamm M'Bride
John H. M'Bride

Action of Assumpsit
Damages \$300.00

The clerk will please issue
in this entitled cause & oblige &c.

Stephenion & Cooper

Endorsed" Brisenden Bothwell & Co vs Leamm
M'Bride & John H. M'Bride, Preise for
Summons. Filed April 22^d 1857.

D. P. Wingate clerk

State of Illinois & p

Clay County & The People of the State of Illinois
to the Sheriff of said County, greeting; We Command
you to Summon Cannon M. Bride & John H. M. Br-
ides, if to be found in your County personally to
be and appear before the Clay Circuit Court on the
first day of the next term thereof to be holden at
the Court-house in Louisville, to answer John
Brispender, James K. Bothwell & Samuel
Hewkinson, a firm trading and doing busin-
ess under the name and style of Brispender, Both-
well & Co of a plea of trespass on the case on promises
to them the said plaintiffs damage of three hund-
red dollars as they say, and have you then and
there this writ, with an endorsement as to the
manner in which you may have executed the
same.

Witness My hand & Judicial Seal
of our said Court & the 22nd day
of April 1857. J. P. Hingate Clerk

"Endorsed" No. 104. May term 1857. Brispender
Bothwell & Co vs Cannon M. Bride & John H. M. Br-
ides. Summon Dept. Sheriffs fee \$2.10
Milap 25- 1.25. Returning 10 = 2.35. H. Phelps
Sheriff by Dudley Pearson Dpt. Sheriff. Served
by Reading to Cannon M. Bride & John H. M. Bride
April 24th 1857. Henry Phelps Sheriff. By Dudley
Pearson Dpt. Sheriff.

Declaration \$16.60 June 23rd 1856

One day after date we promise to pay to the
order of Brispender, Bothwell & Co, one hundred
and sixteen ¹⁰⁰/₁₀₀ Dollars without deduction

Value received, without any relief whatever
from valuation, appraisement or Stay laws draw-
ing ten percent from date. Leamr M. Bride
John H. M. Bride
State of Illinois, S. of the May term 1857, of the
Clay County, 3 Clay County Circuit Court
John Brispen, James K. Bothwell
and Samuel Haskinson, a firm doing
business under the name and style of Brispen
Bothwell & Co the Plaintiffs in this suit, by
Stephenson & Cooper their attorneys complain
Leamr M. Bride and John H. M. Bride the
defendants in this suit, who have been sum-
moned to answer the plaintiffs in an action
of trespass on the case or promises - That
whereas the defendants on the twenty third day
of June in the year of our Lord one thousand
eight hundred and fifty six, at the County of
Clay and State of Illinois, made their certain
promissory note, in writing, and subscribed it
with their names, and for Value received del-
ivered the same to the plaintiffs, and thereby, then
and there promised the said plaintiffs (by their
firm style of Brispen, Bothwell & Co) with-
out defalcation and without any relief from
valuation, appraisement or Stay laws, the sum
of one hundred and sixteen Dollars and seventy
(\$116.70) cents, with ten percent interest from
date, one day after date thereof, which period
had elapsed before the commencement of this
suit - and the defendants afterwards on the
day and year aforesaid in consideration

1. thereof promised to pay the said sum of money in the said promissory note specified, according to the tenor and effect of said promissory note.

And whereas the defendants on the day and year aforesaid were indebted to the plaintiffs in the further sum of one hundred and fifty dollars for money found to be due from the defendants to the plaintiffs on an account then stated between them - And the defendants afterwards on the day and year aforesaid in consideration thereof promised to pay the said last mentioned sum of money to the plaintiffs on request, yet the said defendants have disregarded their said promise and have not paid any of the said money or any part thereof, to the said plaintiffs damage of three hundred dollars and therefore they bring suit &c.

Stephenson & Cooper
Atty for Plffs

And the said plaintiffs file in Court her a copy of the said promissory note sued on to wit;

"\$116.70 June 23^d 1856

One day after date we promise to pay to the order of Bispender Bothwell & Co. One hundred and sixteen ⁷⁰/₁₀₀ Dollars, without defalcation, value received, without any relief whatever from valuation, appraisement or stay laws, drawing ten percent from date.

(Signed)

Levin M. Hyde
John H. M. Hyde

On the back of said note is the following endorsement to wit "See on the within note 10.00

Carum M Bride in ope with Brispender,
Bothwell & Co

1856. To money on account Stated \$150.00

Endorsements " Brispender, Bothwell & Co vs

Carum M Bride & John H. M Bride

Declaration in Assumpsit Damages \$300.00

Filed this April 22^d A.D. 1857.

J. P. Hargate Clerk

Stephenson & Cooper
Atty for Plaintiff"

Demurrer State of Illinois, October Term of the Clay Circuit
Clay County 3 Court A. D. 1857
Brispender, Bothwell & Co

vs
Carum M Bride &
John H. M Bride

And the said defendants
by Heret their Attorney. Say that the declaration
is not sufficient in law. And the said de-
fendant according to the ^{force of the} Statute in such case
made and provided shows to the court here the
following causes of demurrer to the said de-
claration that is to say

1st The non payment of the interest which had
accrued on said promissory note ought to
have been specially averred.

2^d The breach of said declaration is too in-
definite & uncertain, and that the said
declaration is in other respects, uncertain, in
formal and insufficient &c

E. S. Hewet Atty for Deft

Endorsment, "Brisenden Bothwell & Co vs
John M. Bride Et al? "Demurer to Declaration"
Filed October 10th 1857 H. P. Hengate Clerk"
Theoret atty"

And afterwards to wit, at the May term
A.D. 1857 of the Clay Circuit Court the follow-
ing order was had in said cause, on Friday
the 8th day of said month and fifth day of
said term.

John Brisenden
James R. Bothwell
Daniel Haskinsan

vs
Leamon M. Bride &
John H. M. Bride

Assumpsit

Now on this day
It is ordered by the Court that this cause be
continued &c.

And again at the October Term A.D. 1857
of the Clay Circuit Court to wit on Saturday
the 10th day of said month and Sixth of said
term, the following additional order was had
in said cause after the filing of the demurer.

Brisenden, Bothwell & Co

vs
Leamon M. Bride &
John H. M. Bride

Assumpsit.

Now on this day come
the plaintiffs by their attorneys and suggest the
death of Leamon M. Bride, and the defendant
John H. M. Bride, being three times solemnly
called comes not but makes default

Bothwell and company did at the October
term A.D. 1857 of the Circuit Court of Clay County
recover a judgment against the said John H.
McBride for the sum of one hundred and twenty
dollars and sixty one cents, from which
judgment the said John H. McBride has sued
out a writ of Error to the Supreme Court of the
State of Illinois and prayed a Supersedeas to
issue to stay proceedings on said judgment
until a final hearing of said Cause in the
Supreme Court. Now if the said John H. McBride,
shall prosecute his suit with effect, and
shall pay the said judgment rendered by the Cir-
cuit Court as aforesaid together with costs, in-
terests and damages that may be awarded against
him in case said judgment be affirmed, or upon
dismissal of said suit, then the above obligati-
on to be null and void, otherwise to remain in
full force and effect.
Approved by me this the 14th day of July A.D. 1858.
John H. McBride
E. L. Hornet
Clerk

State of Illinois
County of Clay
I, E. L. Hornet, Clerk of the
Circuit Court in and for said County do
hereby Certify that the foregoing contains a
true & correct transcript of all the papers
filed in this cause in my office and
also of all the proceedings of Court had
therein as appears from the files and
record of my office.

and this suit having been brought upon an instrument of writing only. It is ordered by the court that the clerk compute the damages and the clerk having computed the damages ~~herein reports~~ the same to be one hundred and twenty dollars & sixty one cents. It is therefore ordered by the court, that the plaintiffs have judgment against the defendant John H. McBride for the said sum of one hundred & twenty dollars & sixty one cents and for their costs herein expended and thereof have execution &c.

And on the 14th day of July A.D. 1858 the defendant John H. McBride files in the office of the Clerk of the Leland County Circuit his bond with E. L. Hewet his security preparatory to taking said cause to the supreme court of Illinois upon a writ of Error of which the following is a correct copy (viz)

Know all men by these presents that we John Bond H. McBride and E. L. Hewet are held and firmly bound unto John Bissenden James H. Bothwell and Samuel Harrison a firm trading under the name and style of Bissenden Bothwell & Company in the penal sum of four 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 assigns jointly and firmly by these presents. Witness our hands and seals this 12th day of July A.D. 1858. The condition of the above obligation is such. That whereas the said Bissenden

Witness my hand and Seal of said
court at Louisville this the 14th
day of July A. D. 1858.
W. P. Hargate Clerk

John H. McBride

vs

Brigpsenden, Bothwell &c

Clerks fees	14.00
Sheriff "	4.00
	<u>\$18.50</u>

John W. Mc Bride
Plaintiff in error
vs

Clay Circuit Court
Oct Term 1859
Essex vs Clay

Benjamin Bothwell &c,
defendants in error.

The Plaintiff in error
applies for Error

1st The Circuit Court erred in rendering
judgement while there was an
issue of law pending in said
cause. Nye vs Wright 2^d Term -
man 222 Bradshaw vs Hobbs
4th ibid 63.

2nd The Circuit Court erred in
rendering judgement by nil dicit
against the defendant below when
he had a demurrer in to the
declaration unanswered and undis-
posed of in any way.

Steelman vs Watson 5th Gilman
249 Moore vs Little et al. 11th Del.
mois 549

3rd The Circuit Court erred in rendering
judgement against John W. Mc Bride by nil
dicit as there was no service sufficient
to bring defendant before the Circuit
Court.

4th There was no proof of the death of
of James Mc Bride

5th

There was no service on Comm. Mc Bride
the Sheriff return shows service on Comm
Mc Bride

L. L. Bygone

E. L. Hornet atty

for Plff in Error

On inspecting the foregoing record I allow
the writ of Error and that the same be made
a supersedeas on the plff. in Error executing
a bond in the penalty of three thousand dollars,
with E. L. Hornet his security conditioned
according to law - Given under my hand
this 17th day of July, 1858

Sidney Pierce Prof of the

Supreme Court

26

John W. McBride

17

Bristow on Bothwell &c

Bill of Exceptions

John W. McBride 9/1858

A. Johnston atty

And by Hornet Aug. 26, 1858

\$500

Louisville Mo. July 7th 1855
Sir

Judge Breese writes me
that he has ordered a Supraedias to issue
in the case of Bressenden, Ballinall and Co.
vs. John McBride upon filing said
with Clerk of the Supreme Court

Inclosed I send a Bond security
approved by the Clerk of the Court here
Please issue Supraedias immediately
and oblige

Yours Respectfully,
Bryan D. Howet
Atty.

Lalain Dec July 26th 1828
Nook Johnson Esq
Esq my dear friend

Your letter came
to hand this morning. Mr Haworth sent me the
Record in the case to which you refer and request
two me to examine the same as I then forworn
it to Judge Brewster. I did so and have notified
Haworth that he would have to prepare a bond
in obedience to the order of Judge Brewster and
forward it to you before the writ could or would
be issued. Hence if the bond has not come to hand
it will in a few days as there has been frequent
delay and will be sold on 15th August
unless superseded issues before that time
but I have no doubt but that the bond will
be sent you in time, When the bond comes
to hand you will please file the Record and
I will see that your fee is paid and that you
are fully satisfied on the wrong side
I herewith send you a procepe as full as I can
make it from memory leaving blank a space for the
Christian names of Brisenden and Bothwell. I
think Gabriel Hookins is the only additional mem-
ber of the firm. You will please turn to the Declaration
in the Record sent you by Brew and you will find
the Christian names of Brisenden & Bothwell and
will see if Gabriel Hookins is the only other member
of the firm and then amend the procepe for me
and issue the writ accordingly. Also you see from
the procepe for the writ that I have omitted the Christian
names of a Mr Beich that was sued with John H
Mr Beich the plaintiff in Error. The other Mr Beich died

while the case was pending (& before judgment) in the circuit-
court it will be necessary to file the process in the process
& writ with his Christian name & for the purpose of getting
that right you will please look at the copy of the note at
the foot of the declaration (a copy of it) in the Record. His name
was not spelled ^{correctly} in the Return of the Summons by the Sheriff and
there is an assignment ^{therein} upon that point. I was not a-
ware that we would have to prepare a process in the case
and you must make a choice for coming in the prac-
tice of the Supreme Court. Please perfect the process and
give the writ when the bonds comes to hand and all will
be right. You have my thanks for the present for
informing me what was to be done in the case.

Your friend - Silas L. Ryan
P.S. May

My friends in Marion have my
consent to put my name in nomination
before the Congressional Convention to be held
shortly at Nashville. We have never as yet had
a member from this side of the district and I
am satisfied that if Marion Jefferson Clinton
and Washington will stand together and will
unite upon one man we can succeed beyond
a doubt. Marion & St Clair are in a war
as usual when both cannot be served at the
same time and one or the other of those counties
have hitherto always claimed and received the
office in the gift of the people of the district
and they certainly can hold to this part of the dis-
trict for the present. If you and the people of
Jefferson think it is right for me to go to Congress
I shall feel grateful for your assistance.

S. L. R.

Of the November term of
the Supreme Court of the State of
Illinois at St. Verrin 1858

John H. Mc Bride ^{who} was impleaded
with Carum Mc Bride deced } Plaintiff in Error
vs

John Brisenden James } Error to Clay County
H. Botwell and Gabriel J. Jansel
Hoskinson, doing business } Defendants in Error
as partners under the firm
Name of Brisenden Botwell & Co

Per John Johnson
Clerk of the Supreme Court

Wherein a
writ in the above entitled cause to the
defendants in error directed to the Sheriff
of Clay County and returnable to the November
term of said Court for the year 1858. Wherein
issuance writ in obedience to the order of the
Court (per Breckenridge) And oblige

E. L. Hawell & S. L. Hagan

Attys for plaintiff in
Error

(A) Inserted by Clerk

26

St. W. W. W.

ay

W. W. W. W. W.

W. W. W.

John Aug. 2. 1858.

St. W. W. W.

40
Know all men by these presents that we
John M^c Bride and Edmund L. Hunt
are held and firmly bound unto John Brissenden
James B. Bottwell and Gamaliel Haskinson
a Sum of the name and style of Brissenden
Bottwell and company, in the legal value of
one hundred and sixty one and fifty one
cents for the payment of which well and truly
to be made, we bind ourselves our heirs and
assigns jointly, severally and jointly by these
present presents our heirs and assigns that this
twentieth, sixth day of July A.D. 1857,

the condition of the above
obligation is such that whereas the said John
Brissenden, James B. Bottwell and
Gamaliel Haskinson by the true name of
Brissenden Bottwell and company did at the
October term A.D. 1857, of the Circuit Court of
66, county State of Illinois recover a judgment
against the said John M^c Bride for the sum
of One hundred and twenty seven and sixty one
cent from which judgment the said John M^c Bride
has paid out a writ of error to the Supreme
Court of said State of Illinois and prayer a
Supercedias to issue. Now if the said John M^c Bride
shall prosecute his suit with effect and shall pay
the said judgment rendered by the Circuit Court
as aforesaid or whatever judgment may be
rendered by the Supreme Court together with costs

Interests and damages that may be awarded against
him in case said judgment be affirmed, then
the above Obligation to be null and void, otherwise
to remain in full force and effect

John H W Bride Seal
Edmund Hackett Seal

26
W H W Bride

by

Witnesses &c

Born

Filed August 9. 1858

A. S. Johnston Clerk

ILLINOIS, SS.
CLERK'S OFFICE OF THE SUPREME COURT.

} 1st ~~11~~ ¹¹ ~~General~~ Division

I hereby certify, that a Writ of Error hath issued from this Office
for the reversal of a judgment obtained by *John Hissenden* ^{*and Langford Robinson*} against *James H. Rothwell*

John H. McBride - *imphaded with C. McBride* in the Circuit Court

of *Clary* county, at the *October* Term, in the year

of our Lord one thousand eight hundred and *fifty seven* in a certain action

of *assumpsit* ~~for~~ which Writ of Error is to operate as a

Supersedeas, and as such is to be obeyed by all concerned.

Given under my hand, and the seal of the said Supreme

Court, at Mount Vernon, this *ninth* day

of *August* in the year

of our Lord one thousand eight hundred and

fifty eight

Wm H. Johnston

Clerk of the Supreme Court.

ABSTRACT.

JOHN H. McBRIDE, Plaintiff in Error,

vs.

JOHN BRISENDEN, JAMES R. BOTH-
WELL, and GAMALIEL HOSKEN-
SON, Defendants in Error.

ERROR TO

CLAY COUNTY.

1 Action of Trespass on the case on Promises.

2 Special Demurrer to declaration.

3 Judgment by default, without first disposing of the Demurrer on file.

Errors assigned :

4 The Court erred in rendering judgment on the declaration, while there was a Demurrer unanswered and undisposed of in any way.—*Steelman et. al. vs. Wilson et. al.*, 5 Gil., 249 ; *Moore vs. Little et. al.*, 11 Ill., 549.

5 The Court Erred in rendering judgment, while there was an issue at law undisposed of.—*Covell et. al., vs. Marks*, 1 Scam., 338 ; *Manlove et. al., vs. Gallipet*, 1 Scam., 390.

6 The first count of declaration was bad, and the demurrer should have been sustained.

SILAS L. BRYAN,

E. L. HOWET,

} Attorneys for Appellant

Printed at the "Democrat" Job-Printing Office, Louisville, Clay Co., Ill.

26

ABSTRACT.

JOHN H. McBRIDE, Plaintiff in Error,

vs.

**JOHN BRISENDEN, JAS. R. BOTH-
WELL, and GAMALIEL HOSKEN-
SON, Defendants in Error.**

WRIT OF ERROR TO CLAY COUNTY.

SUPREME COURT, DEC., 1858.

**E. L. HOWETT, } Attorneys
 & } for
 SILAS L. BRYAN, } Appellant.**

Democrat print, Louisville, Clay Co., Ill.]

John Apr 11. 1858
St. Louis

ABSTRACT

STATE OF ILLINOIS
SUPREME COURT,

SS. *1st Grand Division*
THE PEOPLE OF THE STATE OF ILLINOIS;
WRIT OF ERROR.

To the Clerk of the Circuit Court for the county of *Clay*

GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the
Circuit Court of *Clay* county, before the Judge thereof, between *John*

Brissenden, James H. Bothwell and Gamaliel
Haskins - under the firm of Brissenden, Bothwell & Co.
plaintiffs, and *John H. McBride - implorant with*

C. McBride

defendant it is said manifest error hath intervened, to the injury of the aforesaid *John H. McBride*

implorant as aforesaid

as we are informed by *his*

complaint, and we being willing that error, should be corrected if any there be, in due form and manner, and that
justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly
without delay, send to our Justices of the Supreme Court, the record and proceedings of the plaint, aforesaid,
with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at

Mount Vernon, in the county of Jefferson, on the *1st* ~~Tuesday~~ *Monday* after the 2^d Monday of

November next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the
error, what of right ought to be done according to law:

John D. Caton
Witness, the Hon. ~~JAMES H. CATON~~ Chief Justice
of our said court, and the seal thereof, at Mount Vernon this

Ninth day of *August*
in the year of Our Lord One Thousand Eight Hundred
and Fifty-*eight*

Noah Johnston
Clerk Supreme Court.

26

John A. McNeill -
implies with
C. McNeill

as { Mrs of Emma

John Brissenden,
James K. Bethune and
Ematid Duckman

Issued - Made a
Superscription
August 9. 1858.
A. Johnston M

"This part of Emma's health is superscription, and
is to be superscription"
John Johnston M

ABSTRACT.

JOHN H. McBRIDE, Plaintiff in Error,

vs.

JOHN BRISENDEN, JAMES R. BOTH-
WELL, and GAMALIEL HOSKEN-
SON, Defendants in Error.

ERROR TO

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2 The Court Erred in rendering judgment, while there was an issue at law undisposed of.—*Covell et. al. vs. Marks*, 1 Scam., 338 ; *Maulove et. al. vs. Gallipot*, 1 Scam., 390.

3 The first count of declaration was bad, and the demurrer should have been sustained.

SILAS L. BRYAN,

E. L. HOWET,

Attorneys for Appellant

Printed at the "Democrat" Job Printing Office, Louisville, Clay Co., Ill.

STATE OF ILLINOIS, }
SUPREME COURT. } ss.

1st Grand Division

THE PEOPLE OF THE STATE OF ILLINOIS,

To the Sheriff of

Clay

County,

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the Circuit Court of

County, before the judge thereof, between

*John Brissenden, James
H. Bothwell and Emanuel Hoskinson - under
the firm, name and style of Brissenden, Bothwell & Co -
Plaintiffs - and John A. McBride - impleader
with C. McBride - - - - -*

defendant; it is said that manifest error hath intervened to the injury of said *John A. McBride -
impleader as aforesaid - - - - -*

as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Mt. Vernon, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said

*John Brissenden, James
H. Bothwell and Emanuel Hoskinson -*

that *They* be and appear before the Justices of our said Supreme Court, on the first day of the next term of said Court, to be holden at Mount Vernon, in said State, on the *first Tuesday after the* Second Monday in November next, to hear the records and proceedings aforesaid, and the errors assigned, if *They* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Brissenden, Bothwell and Hoskinson -* notice, together with this writ.

John D. Caton

Witness, the Hon. ~~Samuel H. Tamm~~, Chief Justice of our said Court, and the seal thereof, at Mount Vernon, this *ninth* day of *August* in the year of our Lord, one thousand eight hundred and fifty-*eights*

Noah Johnston
Clerk of Supreme Court.

No 26

Nov. 1858

Wm M. V. B. - impl^d
with C. M. V. B.
Pty in Em.
res

Briscallin, B. B. & Co
Spts in Em.
Briscallin B. B.

Em. to Clay

8508

Revised for
majority in Em