

No. 13566

Supreme Court of Illinois

Whitman

vs.

Miller

The People of the State of Illinois

To all to whom these presents shall come
Greeting

Know Ye that We having caused to be
inspected the records and proceedings of our
Circuit Court in and for the County of Troquois
in the State of Illinois Do find certain Records
and proceedings in the words and figures follow-
ing to wit

“ State of Illinois }
“ Troquois County } ss. Whereas the Special term
“ of the Troquois County Circuit
“ Court was not holden on the first day of
“ December as heretofore appointed by reason of
“ the unfinished State of the Court house: And
“ Whereas it is considered necessary for the prompt
“ and efficient administration of Justice that a
“ Special term of the Circuit Court should
“ be holden in said County - Therefore be it
“ remembered that I Charles B. Starr Judge of
“ the 20th Judicial Circuit of the State of
“ Illinois by virtue of the power vested in me by
“ the laws of the State of Illinois do hereby order
“ and appoint a Special term of the Circuit
“ Court to be holden in and for the County
“ of Troquois in the State of Illinois on the Second
“ Monday of January A. D. 1859 -

" Given under my hand at Chambers in vacation
" this 7th day of December 1858

" Charles R. Starr
" Judge of the 20th Judicial Circuit
" of the State of Illinois

" United States of America }
" State of Illinois } "ss."
" Troquois County }

" Now before the Hon-
" orable Charles R. Starr Residing Judge of the
" twentieth Judicial Circuit of the State of
" Illinois at a Special term of the Circuit
" Court of said Troquois County begun and
" held at the Court house in the town
" of Middleport in said County on Tuesday
" the Eleventh day of January A.D. 1859

Witness:

" Am. Charles R. Starr Residing Judge of the 20th Judicial Circuit
" Theodore Ayres Sheriff of Troquois County
" Thomas Kemman Clerk of the Circuit Court "

Be it remembered that heretofore
" to wit on the 13th day of November A.D. 1858
" there was filed in the Office of the Clerk of
" said Court a "Receipt" which reads in
" words and figures following to wit

Alincy to the Sheriff of Said County Making
The Command you that you Summon John Miller
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 holden at the Court House in the town
of Middleport on the first day in the month
of December next to answer Jacob A. Whitman
in a plea of trespass on the case on premises
to the damage of him the Said Plaintiff
in the Sum of Five Hundred Dollars and
have you then and there this writ
Witness Thomas Vennum Clerk of our
Said Court and the Seal thereof
at Middleport this 13th day of
November A.D. 1858

Thomas Vennum Clerk

And on the back of Said Summons is the
following Endorsement:

"Jacob A. Whitman"

" 15 "

"John Miller"

"Summons"

"Served Nov 24th 1858 by reading to the"

"Defendant - Reg. Ser. 50"

"Fare 1.00"

"Ret. 10"

"1.60"

"H. Kern Sheriff"

"By McKay Dep"

And afterwards to wit On the 21st day of
January A.D. 1839 it being one of the regular
days of the January Special Term of Said
Court for said year a.D. 1839 the Court being
then duly organized and sitting as a Court
for the transaction of business the following
proceedings were had and entered of Record
by said Court in the Words and figures fol-
lowing to wit

" 201 "
" Geo A Whitman }
" ^{vs} } "Exempt"
" Wm Miller }

" And now comes the
" Defendant by Words his Attorney and moves
" the Court to continue this cause for want
" of a declaration at the costs of the Plaintiff
" Ordered by the Court that this cause
" be continued at the costs of the Plaintiff for
" the want of a declaration

" It is therefore Ordered by the Court
" that the defendant have and recover of
" and from the Plaintiff his costs and charges
" expended in and about this continuance And
" that he have execution therefor against
" the Said Plaintiff."

And afterwards to wit On the 24th day
of May A D 1859 there was filed in the
office of the clerk of said Circuit Court
a Declaration which reads in Words and
figures following to wit

" State of Illinois } Requis County Circuit Court of the
" Requis County: January Special Term A. D. 1859

" Jacob A. Whiteman } Plaintiff
" vs } Demand \$500.00
" John Miller } Damages \$100.00
" Requis County

" Jacob A. Whiteman
" Plaintiff in the above case complains of John
" Miller defendant being in custody &c of a plea
" of trespass on the case on promises to wit that
" Whereas the above named defendant heretofore
" to wit on the 13th day of November in the year
" of our Lord One thousand Eight hundred
" and fifty-eight at the County of Requis
" State of Illinois aforesaid was indebted to
" the said Plaintiff in the Sum of four hundred
" dollars lawful money of the United States of
" America for the work and labor &c attendance
" of the said Plaintiff before that time done
" performed and bestowed as the attorney and
" Solicitor of and for the said Defendant and

upon his retainer in and about the pro-
secuting and defending and Soliciting of divers
Suits and business of and for the Said
defendant and for fees due and of right
payable to the Said Plaintiff in respect
thereof And also for other the work^{ing} labor
care diligence and attendance of the Said
Plaintiff before that time done performed^d
bestowed in and about the drawing copying
and engrossing of divers conveyances deeds
and writings for the Said defendant and in
and about other the business of the Said
defendant and for the Said defendant
and at his Special instance and request
And also for divers journeys and other
attendances by the Said Plaintiff before
then made performed and given in and
about the Said business and other the
business of the Said defendant and for
the Said defendant and at his like
Special instance and request and being
So indebted to the Said defendant in
consideration thereof afterwards to wit
On the day and year aforesaid at the
County of Troguis aforesaid undertook
and then and there faithfully promised
the Said Plaintiff to pay him the Said
last mentioned Sum of Money when he

the Said Defendant should be allowed to
afterwards requested that whereas also
afterwards to wit on the day and year
last aforesaid at the County of Ingham
State of Illinois aforesaid in consideration
that the Said Plaintiff at the like Special
instance and request of the Said Defendant
had before that time done performed and
bestowed and given other his work and
labor care diligence and attendance the
attorney and Solicitor of and for the Said
Defendant and upon his retainer in and
about the prosecuting defending ^{and} Soliciting
of divers other causes suits and business
for the Said Defendant and had also at
the like Special instance and request of
the Said Defendant before that time done
performed and bestowed other his work
and labor care and diligence and
attendance in and about the drawing
copying and engrossing of divers other
conveyances deeds and writings for the
Said Defendant and in and about other
the business of the Said Defendant and
for the said Defendant ^{and} had at the like
Special instance and request of the Said
Defendant before that time made per-
formed and bestowed and given divers

other moneys and attendances in and
about other the business of the said
defendant and for the said defendant
he the said defendant undertook and
then and there faithfully promised the
said Plaintiff to pay him so much money
as he therefore reasonably deserved to have
of the said defendant when he the said
defendant should be thereunto requested
and the said Plaintiff avers that he
therefore reasonably deserved to have of the
said defendant the further sum of five
hundred dollars to wit at the County of
Wagoner State of Missouri aforesaid whereof
he the said defendant afterwards to wit
on the day and year last aforesaid there
had notice and whereas also the said
Defendant afterwards to wit on the same
day and year last aforesaid and at the
place aforesaid accounted together with
the said Plaintiff of and concerning
divers other sums of money before that
time due and owing from the said
defendant to the said Plaintiff and
then and there being in arrear and unpaid
and upon such accounting the said
defendant was then and there found
to be in arrear and indebted to the

Said Plaintiff in the further Sum of
Five hundred dollars like lawful money
as aforesaid and being so found in arrears
and indebted to the Said Plaintiff the
Said defendant in consideration thereof
afterwards to wit on the Same day and
year last aforesaid and at the place
aforesaid undertook and then and there
faithfully promised the Said Plaintiff
well and truly to pay unto the Said
Sum of Money last mentioned when he
should thereunto be afterwards requested
Notwithstanding the Said Defendant notwithstanding
his Said Several promises and
undertakings but contriving and fraud-
ulently intending craftily and subtly
to deceive the Said Plaintiff in this
behalf hath not as yet paid the Said
Several Sums of Money or any or either
of them or any part thereof to the Said
Plaintiff (although often requested so
to do) but the Said defendant to pay him
the Same hath hitherto wholly neglected and
refused and still doth neglect and refuse
to the damage of the Said Plaintiff of Five
hundred dollars and therefore he brings
this Suit &c. J. A. Whitman

"In Proper Person"

"	Bill of Particulars	
" 1838	John Miller vs. Jacob A. Whitman	50
" Apr 13th	To Mark Tator and Services as the	
"	Attorney & Solicitor and for money	
"	expended in and about the business	
" 1838	of said John Miller and retains Fee	\$ 500.00
" Apr 13th	To balance due on account Stated	\$ 500.00
"	D ^r To defend in case Hatfield vs. Miller	500.00
"	D ^r in case John Miller vs. Julia Miller	
"	in cir court - divorce	150.00
"	D ^r in case of petition for partition	150.00
"	D ^r in case in cir court to perfect deed	200.00
"	D ^r for defense of locating road in	
"	Supervisors Court	50.00
"	D ^r to a General Retainer	150.00
"	D ^r to Depue in Suit in LaSalle	
"	cir court at Ottawa	150.00

On the back of the foregoing declaration
is the following endorsement

" Jacob A. Whitman

" 15

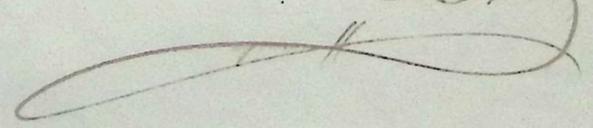
" John Miller

" Attest

" Filed May 21st 1839

" Thomas Brumby

" Clerk "



And afterwards to wit on the 9th day
of June A.D. 1859 it being one of the regular
days of the June term of said for said
year A.D. 1859 the court being then duly
organized and sitting as a court for the
transaction of business the following proceed-
ings were had and entered of Records
by said court in the words and figures
following to wit

" Jacob A. Whiteman }
" 80 vs }
" John Miller } Affumpsit "

" On Motion it is ordered
by the court that this cause be stayed
until one o'clock this afternoon "

And afterwards to wit on the 9th day of
June A.D. 1859 a Plea was filed in said
court in words figures following to wit

" State of Illinois }
" Proquis Comy } ss. June Term A.D. 1859
" John Miller }
" ad }
" Jacob A. Whiteman } Pleas

" And the said
defendant by Washington Hood the Attorney

comes and defends the wrongs of injury
when I And says that the said
Plaintiff ought not to have or maintain
his aforesaid action thereof against
him because he says that the said
Plaintiff heretofore writ at the county
of noquis and State aforesaid before
C. H. McKee an acting Justice of the
Peace of said County duly commissioned
as such on the 19th day of February
in the year of our Lord 1839 and since
the commencement of this Suit impleaded
the said defendant in a certain plea
of trespass on the case on premises to
the damage of the said Plaintiff of
one hundred Dollars for the not
performing the very same identical
promises and undertakings and
each and every of them in the said
declaration mentioned and such pro-
ceedings were thereupon had in the
said Court in that plea that
afterwards to wit on the said
day the said Plaintiff by the
consideration and judgement of the
said Court recovered in the said
plea against the said defendant
Seventeen dollars & 50 cts his costs
for his damages which he had

Sustained as well on occasion
of the not performing the same id-
entical promises & undertakings in
the said declaration mentioned as
for his costs and charges by him
him about his suit in that behalf
expended whereof the said defendant
was convicted as by the Record and
proceedings thereof still remaining in
the said Justice Court at Ingham
County aforesaid more fully & at
large appears which said judgment
so rendered was fully paid satisfied
and discharged on the day of the
rendition of the same; And this the
said Defendant is ready to verify by
the said Record wherefore he prays
judgment if the said Plaintiff ought
to have or maintain his aforesaid
action thereof against him &c
Washington & Wood Attys

On the back of which Plea is the following
endorsement

= John Miller } Plea
ats }

= Neot A. Whiteman }

= Filed June 9th 1839, Thomas Kemmer Clerk
Washington & Wood attys

And afterwards (to wit) on the said next
day of June a D 1859 it also being one of the
regular days of the term of said Court
for said year a D 1859 the said Court being
then duly organized and sitting as a Court
for the transaction of business the following
proceedings were had and entered of record
by said Court in the words and figures
following (to wit)

"80

" Jacob A. Whitman }
" vs } Plaintiff
" John Miller } Defendant

" And now comes by the Plaintiff
" by Paddock his attorney and files a demurrer
" to the defendant's plea and the Court
" after hearing the arguments of counsel
" ordered that the demurrer be sustained.
" And now comes said attorney for defendant
" and files a plea of the General Issue for
" the defendant herein And thereupon a Jury came
" to wit ~ James Hingland, Thomas Mason, Samuel Clark,
" William Wilson, Thomas Kanaday, James R. Smith
" R. J. Humphrey, L. P. Waring, John Astell
" J. M. Beede, Joel R. Smith and John A. Meriman,
" twelve good and lawful men who were
" empaneled and sworn to well and truly
" try the cause upon the issue joined according

" to the evidence and after hearing the evi-
" dence the arguments of counsel and the instr-
" uctions of Court retire in charge of an officer
" to consider of a verdict and afterwards
" return into court with a verdict in substance
" as follows: We the Jury find for the Plaintiff
" Three hundred and forty two dollars and fifty
" cents And now comes the defendant and excepts
" to the instructions given by the court on the part
" of the Plaintiff and also excepts to the opinion
" of the court in refusing to give the first in-
" struction asked on the part of defendant
" And also enters his motion for a new trial
" in this cause "

And afterwards to wit on the 11th day of June
A.D. 1859 a Replication was filed in Said
Court in words of figures as follows (to wit)

" Neal A. Whitman } In Equity Court Circuit Court
" 23 } Same Term A.D. 1859
" John Miller }

" And the Said Plaintiff
" as to the Said Special plea by the Said
" defendant by him above pleaded comes
" for replication thereto says that this
" suit is not ^{to} recover for the same thing
" or causes of action as set forth in said plea

" but was commenced long before the immen-
" cement of the said Suit before said Justice
" in said plea mentioned for other & distinct
" items of amounts for legal Services done &
" rendered for said defendant by this
" said Plaintiff at his said defendant re-
" quest & due & owing this Plaintiff before
" the time of the bringing of this Suit and
" that all the matters & things for which
" said action was brot. before said Justice
" of the Peace as in said plea mentioned
" was for causes of action arising since the time
" of the bringing of this his said Suit in said
" Circuit Court and of this he puts himself
" upon the country &c
" & deft doth the like } W. Paddock
" S. Washington } Attorney for Puff.
" Wrod for defts. }

Which said Replication was endorsed as
following

"Whitman"

" 75

"Miller"

"Plea"

"Filed June 11th 1859"

Thomas Bonum Clerk

And Afterwardly To wit. On the 14th day of
June A. D. 1859 There was filed with the
Clerk of said Court an "Assignment of Judgment"
which is in words & figures as follows

" June 13th. A. D. 1859
" I the Undersigned
" Subscribed do hereby assign to Robert
" Hall a Judgment obtained by me
" against John Miller for Three Hundred
" and forty two dollars and fifty cents
" for value received of him which judge-
" ment was rendered at the June term of the
" Noqueon County Circuit Court 1859
" J. A. Whitman."

Which assignment was endorsed as follows

" Recd A. Whitman "

" or "

" John Miller "

" Assignment of Judgment "

" Recd June 14th 1859

" Thomas Remond "

" Clerk "

And afterwards to wit on the Said 14th
day of June An Affidavit for a New Trial
was filed in said Court which was in
words & figures as follows to wit

" State of Illinois } In Equity Circuit Court
" In Equity Cause vs. James Sims a. d. 1859

" John Miller }
" ad } Affidavit
" Jacob W. Whiteman }
" John Miller

" the defendant in the above entitled cause
" on this Motion for a New Trial says that
" in the Said Judgment rendered against
" him and in favor of Jacob W. Whiteman
" he is greatly injured and was prejudiced
" in his said trial for the want of
" sufficient evidence to establish his
" defense: That since the trial of Said
" cause he has discovered other evidence not
" cumulative; by which said evidence
" he can show that the Said Whiteman
" in his Said Suit vs. Sully Westfield has
" improperly conducted the Same that
" the Said petition for partition was not
" sworn to and that Said Whiteman
" called upon Stephen G. Davis a member
" of the Bar to a fist him in said Suit

" The said Povic having been previously spoken to to act as an attorney in the matter of said affiant but on conferring with said Whiteman discovered that said Whiteman was acting corruptly in the matter and that said Whiteman declared to said Povic when informed of the defective testimony getting up, that he did not care and said to said Povic, that said Miller was a responsible man and he would get him in a tight place and get a large fee out of him that the whole course of said Whiteman's conduct of said suit was incorrect, un-lawyerlike and and in open violation of the duties of an attorney towards his client and solely as he believes he can show by said Povic for the purpose of making large fees off of said affiant as he said Whiteman declared to said Povic, that this testimony has only been discovered since the trial of said cause not having been previously known to affiant. My this affiant further stated that he has been informed since the trial that David F. Knight will testify that he asked Whiteman why he

" had sued this affiant and that he
" replied that he had been lawing for
" Miller four or five years and that all he
" ever charged him was fifty dollars and
" he had to sue to get that
" Subscribed & sworn John Miller
" before me this 14th
" day of June A.D. 1839
" Heman Brumwell "

And which said Affidavit was end-
orsed as follows

" Jacob W. Whitman "

or

" John Miller "

" afft.

" Held & sworn to 1839 "

" Heman Brumwell atty "

And afterwards to wit On the 18th day of
June A.D. 1839 it also being one of the regular days
of the June Term of said Court for said
year A.D. 1839 the Court being then duly organ-
ized and sitting as a court for the trans-
action of business the following proceedings
were had and entered of Record in the
words and figures following to wit

" 80 } Jacob A. Whitman
" vs } Akumpsit
" John Miller }

" The Motion by the defendant
" for a new trial in this cause coming up for
" argument and the court being fully advised
" in the premises ordered that the motion be
" overruled. And comes the defendant and excepts
" to the opinion of the court in overruling the
" Motion for a new trial.

" It is therefore considered and ordered
" by the court that the Plaintiff have and
" receive of and from the defendant the Said
" Sum three hundred and forty two dollars
" and fifty cents (being the verdict of the
" Jury in this cause) together with his costs
" and charges expended in and about the
" prosecution hereof and that he have
" Execution therefor against the said defendant.

" And now comes the defen-
" dant and enters his Motion for an appeal
" to the Supreme Court of this State in this
" cause. And the court being advised in the
" premises ordered that the appeal be
" granted on condition that the defendant
" enter into bond with Security to be approved
" by the Clerk of this court in the Sum of Seven

" hundred dollars within twenty days from
" this date "

And afterwards Sawitz On the 28th
day of June A D 1839 an Appeal Bond
was filed in the ^{office of the clerk of} said Court which reads
in the words and figures following to wit

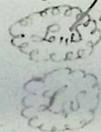
" Know all men by these presents
" that we John Miller and William Price
" of the County of Ingham and State of Illinois
" are held and firmly bound unto Jacob A.
" Whitman in the penal Sum of Seven hundred
" dollars good and lawful Money of the
" United States for the payment of which
" well and truly to be made bind ourselves
" our heirs executors administrators and assigns
" jointly by these presents witness our hands and
" Seals this twenty eighth day of June in
" the year of our Lord One thousand eight
" hundred and fifty nine

" The condition of the above
" obligation is such that whereas the Said
" Jacob A. Whitman did on the tenth day
" of June A D 1839 at a term of the Ingham
" Circuit Court then being held in and for
" said County recover a judgment against
" the said John Miller for the Sum of Three

" Hundred forty two ⁵⁰ 1000 dollars ^{the costs of}
" Suit from which judgment the above
" Comander John Miller has taken an appeal
" to the Supreme Court of the State of Illinois
" Now if the said John Miller shall without
" delay prosecute his appeal to effect
" and shall pay whatever judgment costs
" interests and damages may be awarded
" by the Supreme Court in case the Judgment
" of the said Circuit Court is affirmed
" then the above obligation to be void
" otherwise to remain in full force ^{and effect}

" Taken ^{and} approved by me
" this 28th day of June A 1859
" Thomas Immens Clerk

John Miller
Wm. Pierce



On the back of said Appeal Bond is the
following endorsement (to wit)

"Met A. Whitman"

vs

" John Miller "

" Appeal Bond "

" Filed June 28th 1859 "

" Thomas Immens Clerk "

State of Illinois

Inyoquois County ss

I Thomas Deunum Clerk of the Circuit Court in and for the said County in the State aforesaid do hereby certify that the within and foregoing is a true, complete and perfect transcript of the Record of the proceedings of the Inyoquois County Circuit Court in said cause wherein Jacob A. Whitman is Plaintiff and John Stiles is defendant, and also of the papers on file in said cause,

In attestation of which I hereunto set my name and the seal of the Circuit Court of said County at Mendaleport this 16th day of January A.D. 1860

Thomas Deunum

Clerk

And now comes the appellant by his Attorney and says that there is manifest error in the said record in this to wit:

- 1 Because there was no legal special term of the Missouri Circuit Court in January N. D. 1839 at which ~~at~~ ~~which~~ this suit was commenced and proceedings thereon had.
- 2 The court erred in sustaining the demurrer to the appellants special plea -
- 3 The court erred in overruling the defendants motion for a new trial -

Chas. H. Wood
Atty. for Appellant

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of A. Whitman

¹⁵
John Miller

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Manuscript

WJH

Filed April 24 1860

L. Leland

Clerk

Whitman

or
Miller
WJH