

No. 13184

Supreme Court of Illinois

Lawler

vs.

Minard

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 228.

Larkin

Murray

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STATE OF ILLINOIS—SUPREME COURT,
THIRD GRAND DIVISION—APRIL TERM, 1861.

—•—
MICHAEL LAWLEE vs. IRA MINARD.

POINTS AND AUTHORITIES ON THE PART OF THE APPELLANT.

By our statutes a garnishee is liable for all that may be in his hands or owing by him to the principal debtor upon a fair settlement between them from the service of the garnishment. 2nd Freeman's Digest, P. 897, Section 1, and the authorities there cited. Section 38, Page 307 of Statutes of 1845, provides that after the execution shall be returned "no property found," plaintiff shall have a right to garnishee process. Which section is as follows :

"Whenever a judgment shall be rendered by any Court of Record or any Justice of the Peace in this State, and an execution against the defendant or defendants in said judgment shall be returned by the proper officer "no property found," on the affidavit of the plaintiff or other credible person being made before the Clerk of said Court or Justice of the Peace that said defendant or defendants have no property within the knowledge of such affiant in his or their possession liable to execution, and that such affiant hath just reason to believe that another person or persons is or are indebted to such defendant or defendants or hath or have any effects or estate of such defendant in his or their hand, it shall be lawful for said Court or Justice of the Peace to cause the person or persons supposed to be indebted to, or supposed to have any of the effects or estate of the said defendant or defendants to be summoned forthwith to appear before said Court or Justice as garnishee, or garnishees, and said Court or Justice of the Peace shall examine and proceed against such garnishee or garnishees in the same manner as required by law against garnishees in original attachment."

Section 12, Page 61, Revised Statutes of 1846, provides what shall be the duty of the Justice of the Peace in case of garnishee. It is as follows :

"If any garnishee shall appear at the time and place required by the constable as aforesaid, and shall upon oath deny all indebtedness to the defendant in the attachment and deny having any property or effects or

choses in action in his possession or power belonging to such defendant, the Justice shall forthwith discharge him unless the plaintiff in the attachment shall satisfy the Justice by other testimony that the garnishee was indebted to the defendant in the attachment, or had property effects or choses in action in his possession or power at the time he was garnisheed in which case the Justice shall give judgment in the premises according to the right and justice of the cause and issue execution as in other cases."

Infancy may be given in evidence under the plea of the general issue, when offered in the Circuit Court for the first time.

Gear vs. Wheeler, 1st Scammon P. 554.

In actions of assumpsit where ^{any} everything which shows that the plaintiff has no subsisting cause of action may be given in evidence under the general issue.

A former verdict in judgment may be given in evidence without pleading. 2nd of Gilman, P. 359. Warner vs. McNulty. Gray et al vs. G. Milan, 15 Ills. P. 453.

Section 66, page 325 Revised Statutes of 1845, provides that in all appeals to the Circuit Court, the same shall be tried upon the merits.

W.D.S. & Co.
Attys at Law

SUPREME COURT OF THE STATE OF ILLINOIS, THIRD GRAND DIVISION.

IRA MINARD, Appellant,
vs
MICHAEL LAWLER, Apellee. }

APRIL TERM, A. D. 1861.

ARGUMENT AND BRIEF OF DEFENDANT.

The defendant worked for the Appellant, Minard, digging a Well; they could not agree on settlement, and Lawler sued Minard for his pay. From that time, Minard, who is a rich Banker at St. Charles, Kane County, set himself at work, and his attorneys, to defeat a recovery, or to prevent Lawler for obtaining any of his hard earned wages, or eat it up in costs. Lawler recovered a Judgment in the Magistrate's Court of \$70; much less than he was entitled to: and on the last day for taking an Appeal, took an Appeal to the Circuit Court, and there recovered a Judgment of \$97 69. Minard takes an Appeal to this Court, to correct errors as he alleges of the Circuit Court.

Between the time of the rendition of the Judgment before the Magistrate in favor of Lawler and the taking of the Appeal. Minard (see page 30 of Record, Robinson's testimony) induced some of Lawler's creditors to sue him on *short notice*, swear out Executions, return them same day, and Garnishee him, Minard, who went before the Magistrate, confessed he owed Lawler, and then went, *after the Appeal was taken*, and voluntarily paid them, and all this was done to circumvent Lawler.

On the trial before the Circuit, Minard offers the Justice's Docket, to prove these judgments against him as Garnishee, and the evidence of payment of them as a payment, set-off or satisfaction, I do not know which, upon trial, not having given Lawler any previous notice, or asked or obtained leave of the Court to fill any plea, or new account or new matter, or given any notice whatever, that new matter would be introduced. The Court ruled it out, and we think correctly so.

FIRST, for the reason that the evidence was no legal defence at the time of the commencement of the suit. No acts of Minard after the commencement of the suit, without Lawler's consent, could be given in evidence to defeat Lawler's legal claim. The rights of the parties were to be determined as they existed at the time of the commencement of the suit. Parties cannot exhibit other and different claims in the Circuit Court, from those which were produced and relied on before the Justice.

Brookbank vs Smith, 2 Scam. 78.

Circuit Court may in its discretion, allow an additional account filed, but leave must be obtained of the Court, and the exercise of that discretion cannot be questioned here; but the opposite party must have some notice, if new matter is to be relied on.

Waterman vs Bristol, 1 Gill, 593.

In the case of Webb vs Lasester, 4 Scam. 543, the Court allowed the defendant to file his account for the first time *after the trial had commenced and Jury sworn*; this was held to be error. That is precisely the case now before the Court. Minard gave no notice of new matter till after the Jury were sworn. The same principle is decided by this Court in the case of Bates vs Bulkley, 2 Gill, 393.

SECONDLY. The evidence was not admissible on the ground, that it was matter that had arisen since the commencement of the suit, and since the last trial. It must be plead *puis d'arien continuance*, before the trial commences. Coles vs Madison Co. 116 of Breese. Robinson vs Burkerill, 2 Scam. 278.

True, this Court has decided in 2 Gill, 393, before quoted, that no written pleading are required in Justice's Court, still it is incumbent on the defendant to state his defence in the Court *before the commencement of the trial*, so that the other party may have notice of it, and take a continuance, if he is not prepared, otherwise the grossest injustice may be done.

In the case of Ross vs Nesbitt, 2 Gill, 252, the Court says, that what has happened since last trial or continuance, is required not only to be pleaded, but *strictly so*; formal in all its character. The time and

place of last continuance stated, *when and where the matter of defence arose*, and what it is; particularly so in the case now before the Court, as the matters relied on for defence, and ruled out by the Circuit Court, were acts over which the Appellee, Lawler, had no control or knowledge of, and to give him no notice of them until the evidence is sought to be introduced, would be an act of gross injustice, such as law will not tolerate.

Minard's defence sought to be introduced and ruled out, must be either a set-off, or payment. If set off, it was not admissible, because it was not mutual between the parties, and was not a subsisting cause of action in his favor at the time of the commencement of the suit.

Ryan, et al, vs Barger, &c., 16 Ill. 28.

If it was a payment by Minard, then it was not accepted by Lawler, nor authorized by law. At the time of the Garnishee Judgments against Minard, the Judgment in favor of Lawler was not absolute. It was only *inchoate*, not absolute. A party cannot force himself to be another's debtor, hence the payments made by Minard, were made at his own hazard, and the law machinery worked too hasty, not to exhibit an intentional fraud on his part, which the Court will not be ready to relieve him from.

The Court gave all the instructions asked for on the part of Minard, and the two given on the part of Lawler are clearly the law in the case, and by an examination of the evidence, the Court will see that the Verdict of the Jury is fully borne out by the evidence, and the Judgment should be affirmed with costs.

CHARLES B. WELLS, Attorney for Appellant.

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Dea Minard

v

Michael Lawler

Brief & Argument

Filed May 6 1861

L. Leland
Clerk

**SUPREME COURT
OF THE STATE OF ILLINOIS,
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place of last continuance stated, *when and where the matter of defence arose*, and what it is; particularly so in the case now before the Court, as the matters relied on for defence, and ruled out by the Circuit Court, were acts over which the Appellee, Lawler, had no control or knowledge of, and to give him no notice of them until the evidence is sought to be introduced, would be an act of gross injustice, such as law will not tolerate.

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The Court gave all the instructions asked for on the part of Minard, and the two given on the part of Lawler are clearly the law in the case, and by an examination of the evidence, the Court will see that the Verdict of the Jury is fully borne out by the evidence, and the Judgment should be affirmed with costs.

CHARLES B. WELLS, Attorney for Appellant.

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Era Minard

&

Michael Lawler

Brief & Argument

Filed May 6, 1861

L. Leland Clark

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

MICHAEL LAWLER }
vs. } *Appeal from the Circuit Court of Kane County.*
IRA MINARD.

ABSTRACT OF RECORD.

This was an action commenced by plaintiff against defendant before A. R. McWayne, a Justice of the Peace.

2 Summons in usual form in assumpsit, summons returned served, parties appeared before Justice, trial had, judgment for plaintiff for the sum
3 of \$70 debt, besides costs of suit.

5 Appeal taken by plaintiff 14th day of January, 1860, to the Kane Circuit Court.

6 Appeal papers filed in Circuit Court, February 7th, 1860.

7 Appeal summons issued to defendant same date in usual form.

Served on defendant by E. J. Allen, Sheriff of said county.

Case called for trial in Circuit Court, parties appeared and Jury sworn, &c.

10 The plaintiff to maintain the issue on his part, called as witness,

MICHAEL BRODERICK:

Who testified as follows: Knows the parties to this suit.

Plaintiff worked for Ira Minard.

Took up an old well and dug a new one.

Worked 8 days each in taking up the old well.

Began on Wednesday and worked 4 days.

Left it 10 days, took the stone nearly all out.

Left it in good condition of Saturday night, on Monday morning it was caved in. Had to abandon and dig a new one. Don't know but the old well might have been gone on with. There was not more than a foot or 18 inches of water left in the old well.

We dug a new well. I worked with him. New well 52 or 53 feet deep. Most of the stone came from the old well. Some stone was brought from the river.

They were brought by Minard's team. Minard and I measured the well. We worked $26\frac{1}{2}$ days each on both wells.

On Cross-examination :

He testified: It was about 2 weeks after we began on the old well before we left it 10 days.

- 11 Came back on Monday and found the well caved in. We did not take out any stone after that ; the old well was 34 feet deep.

Re-examined by plaintiff :

We worked 4 days and left and were gone 10 days. We went back on Wednesday, broke a pick, and left. Went back on Thursday and worked until Saturday night. Went back Monday morning, found well caved in.

PETER McFARLIN,

- 12 Being sworn for the plaintiff, testified as follows :

I am a well digger, have dug wells 7 or 8 years, charge \$1 a foot for first 20 feet. I add one shilling per foot for every 10 feet after that and be boarded. A six foot well is worth \$1,25 a foot for the first twenty feet ; 25 cents a foot for every 10 feet thereafter is added. It is worth \$2,75 per day for two men and tools taking up old well.

Cross-examined by defendant.

I offered to dig a well for defendant for 75 cents a foot, nothing said about size. Minard said he could hire an Englishman for 75 cents a foot. I said this to banter him ; I never dug a well for 75 cents a foot. I did not mean to dig it for that price.

- 13 The plaintiff here rested his case.

The defendant to maintain the issue on his part then called A. R. McWayne, who being duly sworn, testified as follows :

I am acting Justice of the Peace within and for Kane county, and have been since the first of November, 1859. This is my docket. Here docket produced.

The Defendant then offered to read in evidence from said Docket a judgment obtained against Ira Minard in favor of Michael Lawler ; plaintiff objected to the reading of said judgment.

Which objection was sustained by the Court.

To the ruling of the Court in sustaining such objection, defendant then and there excepted.

Judgment docket sets out a judgment in favor of Lawler and against Minard for the sum of \$70 and costs, and is in the usual form of Justices' judgments.

14 The defendant then offered to read in evidence from said docket a judgment against Michael Lawler and in favor of Benjamin F. Bettsworth

Judgment in favor of Bettsworth after a trial before said Justice, in which both parties appeared for the sum of \$15 and costs. January 4th, 1860, on oath of plaintiff, execution issued. January 7th, 1860, execution returned, no property found by constable.

15 To the reading of which judgment in evidence to the jury the plaintiff objected, which objection was sustained by the Court. Exception taken. The defendant offered to read in evidence the execution and the return by the constable, issued by the said A. R. McWayne, Justice; the execution of which was duly proven by said witness, execution against Lawler and in favor of Bettsworth. The execution in the usual form of Justices' executions, (full copy of all these papers in the records.)

16 To the reading of which execution in evidence, plaintiff objected. Objection sustained, exceptions taken.

17 Defendant then offered to read in evidence an affidavit by Benjamin F. Bettsworth, (the execution of which was proven by said witness) for a garnishee summons against Ira Minard, (said affidavit being in the usual form of affidavits for garnishee summons) to the reading of which in evidence the plaintiff objected, objection sustained by the Court; exception taken by defendant.

18 The defendant then offered to read in evidence a garnishee summons and the return thereon, by the constable, which was duly proven by said witness, against the said Minard and in favor of said Bettsworth, (which summons was in the usual form, a garnishee summons, and duly served by constable.)

19 To the reading of which in evidence the plaintiff objected; objection sustained by the Court; exception taken by defendant.

20 The defendant then offered to read in evidence from the docket of said Justice, a judgment rendered against said Minard as garnishee, and in favor of said Bettsworth, for the sum of \$19.60, besides costs, and the receipt of said Bettsworth on said docket of said judgment and costs in

full; to the reading of which judgment in evidence the plaintiff objected, objection sustained; exception taken by defendant.

The defendant then offered to prove that said judgment in favor of said Bettsworth and against said Minard as garnishee, had been fully paid and satisfied by said Minard, to the introduction of which evidence, the plaintiff objected; objection sustained; exception taken by defendant.

21 Witness then testified that A. H. Barry brought into his office from A. V. Sill, Justice of the Peace, transcript of judgment in favor of Michael Broderick, against Michael Lawler. Barry and witness figured up costs, and judgment of Broderick and Bettsworth judgment, and Barry paid witness balance of Lawler's judgment. Lawler took an appeal on the last day. Witness informed him what had been done and he refused to receive the balance of the money; that said Lawler came to the office of said Justice on the last day on which an appeal in the case of Lawler vs. Minard, could be taken, and that he said witness then informed said Lawler of the amount of money that had been paid to said Bettsworth on said garnishee judgment. He also informed said Lawler of the amount of money paid upon a garnishee judgment in favor of Michael Broderick and against said Minard. And that, he said McWayne, then offered to pay said Lawler the amount due on his judgment against said Minard after deducting the amount paid on the garnishee judgments in favor of Bettsworth and Broderick, which Lawler refused to receive.

Defendant then called Alexander V. Sill, who testified as follows:

22 I am an acting Justice of the Peace, for the county of Kane, and have been since the 1st day of November, 1859, until the present time; (book presented to witness) this is my docket. The defendant then offered to read from said docket a judgment rendered by said Justice in favor of Michael Broderick and against said Michael Lawler, (the entry of said judgment being in the usual form,) to the reading of which in evidence the plaintiff objected; objection sustained by the Court; exception taken by defendant.

23 Defendant then offered to read in evidence the execution in favor of said Broderick, and against said Lawler, upon said judgment, and the return of the constable on said execution. which execution and return was duly proven by said witness, (which execution and return of constable are in the usual form.) To the reading of which in evidence the plaintiff objected; objection sustained; exceptions taken by defendant.

Defendant then offered to read in evidence the affidavit of Michael Broderick, (the execution of which was duly proven by said witness) for a garnishee summons against Ira Minard.

25 To the reading of which in evidence the plaintiff objected; objection sustained; exception taken by defendant.

26 Defendant then offered to read in evidence a garnishee summons issued by said Justice in favor of Michael Broderick and against Ira Minard and the return of the constable on said summons, the execution of which summons and return thereon was duly proven by said witness, (and in the usual form,) to the reading of which summons and return thereon the plaintiff objected, objection sustained; exceptions taken by defendant.

27 Defendant then offered to read in evidence from the said docket, a judgment rendered by said Justice, in favor of said Broderick against said Ira Minard, to the reading of which in evidence the plaintiff objected; objection sustained; exceptions taken by defendant.

Defendant then offered to prove by said Sill that said judgment had been fully paid to said Broderick by said Minard. To the giving of which in evidence the plaintiff objected; objection sustained; exceptions taken by defendant.

28 Defendant then called Benjamin F. Bettsworth, who testified as follows:

I am acquainted with the parties; knew the work of plaintiff in taking up old well and digging new one; They commenced taking up old well on Monday; worked until Wednesday, then left and were gone 13 days; came back on Wednesday, worked until Saturday night; came back again Monday morning; think the well was in no worse condition than when they left it Saturday night; old well taken up because it was stoned to small; was 34 feet deep; new 52 feet and 9 inches deep; Lawler did not work well taking up old well; Broderick wanted him to work more; old well was not convenient; think old well might have been taken up and re-stoned.

Cross examined.

Am not a well digger.

Defendant then called John Bettsworth, who testified as follows:

29 Know the parties to this suit; acquainted with Broderick and Lawler when they were digging the well; saw them every day; they did not work steady; would work an hour or so and then quit; Lawler would come out of well and lie down in shade of hay stack; think they did not work steady, in taking up old well or digging new one; old well was caved in a strip about 3 feet long and 6 inches thick; saw the old well six weeks after, it was not caved in any more than when they left; it not caved in; we filled it up; saw Lawler often when I thought he was intoxicated; saw them drink occasionally.

Cross examined.

Was not much acquainted with Lawler when he began work on the well ; have seen folks drink whisky before when digging wells, but not so much.

Plaintiff here admitted defendant had paid him \$8, to apply on work.

Defendant then called John McGilfra, who testified as follows :

Saw Lawler and Broderick when they worked on Minard's wells ; they did not work very steady ; Lawler would come out of the well and lie down ; saw them drink whisky several times ; saw the old well ; it did not cave in any more after they left it.

Cross examined.

Have seen others drink when digging wells ; did not go down into the well.

30

Defendant here rested his defence.

The plaintiff re-called Michael Broderick, who said Lawler did not come out of well often to rest ; quick sand thick in bottom, and some water in bottom of well ; new well was larger than common wells.

Plaintiff then called James Piece, who testified as follows :

I worked for Minard at time new well was dug ; Took the men out to take up well, and drew the stone from the river for Minard ; was some water in old well ; could not sink a bucket.

Plaintiff then called George Robinson, who testified :

I heard a conversation between Minard and Broderick ; Broderick wanted to borrow money, Minard said he would not lend money to his own brother ; told Broderick to wait and get his judgment of Lawler and he would have money ; did not hear Minard advise Broderick to sue Lawler or garnishee him, Minard.

The above is all the evidence given on the trial.

The plaintiff then asked and the Court gave the following instructions.

To the giving of which the defendant by its counsel excepted.

Copy of instructions given by plaintiff :

31 "If the jury believe from the evidence that the plaintiff dug and stoned a well for the defendant, and during the progress of the work was aware of said work being done, and that it was done with his consent, then the jury should allow the plaintiff the amount proven that said work was worth."

"If the jury believe from the evidence that the defendant employed the plaintiff to stone up an old well for the purpose of sinking it deeper, and through some defect or accident over which the plaintiff had no control, abandoned that work, and dug a new well with the approbation and consent of the defendant, then the plaintiff has a right to recover pay for his services on the old well."

To the giving of which instructions to the jury, the defendant by his counsel then and there and at the same time excepted.

The defendant then asked the Court to give, and the Court gave the following instructions to the jury :

32 "The only question to be determined in this case, is the question of indebtedness of the defendant to the plaintiff, and unless the plaintiff has proved a special contract, then all the plaintiff is entitled to recover is the amount which the services were proved to be worth, taking the evidence into consideration."

"The plaintiff, in order to recover pay for board, while doing the work is bound to prove that he boarded himself, or paid, or was liable to pay for the same, and if he has failed to prove the fact, he cannot recover for the same."

"Before the plaintiff can recover for the work of Broderick, he must prove to the satisfaction of the jury that Broderick was working for Lawler, and if he has failed to prove this fact, then he, Lawler, cannot recover for the work of Broderick."

"If the jury believe from the evidence that the plaintiff, Lawler, undertook to do a job of work for the defendant, Minard, and they further believe from the evidence that Lawler neglected the work after beginning the same, or that Lawler did the work in a negligent or unskillful manner, so that injury resulted to Minard from such negligence or unskillfulness, then the jury should take that fact into consideration in making up their verdict."

33 "If the jury believe from the evidence that the plaintiff Lawler, undertook to take the stone out of the old well for Minard and restore the

same, and if the jury further believe from the evidence that Lawler after doing a part of the work, and then went away and neglected the work in an improper manner, so that injury resulted to Minard from such negligence, then the jury have the right to take such injury in the account in making up their verdict."

"If the jury believe from the evidence that Broderick was working for Minard, and if they further believe from the evidence that Minard has paid said Broderick for such work, then Minard is not liable to Lawler for such work of Broderick."

ERRORS ASSIGNED BY THE DEFENDANT.

1st. The Court erred in receiving improper evidence on the part and behalf of the plaintiff.

2d. The Court erred in rejecting legal and competent evidence on the part and behalf of the defendant.

3d. The Court erred in giving improper instructions on the part and behalf of the plaintiff.

4th. The verdict of the jury is against the evidence.

5th. The verdict of the jury is against both the law and evidence.

6th. The Court erred in overruling the motion for a new trial.

7th. The Court erred in rendering judgment on the verdict of the jury.

W. D. BARRY,
Attorney for Defendant.

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Lawler)

vs

McInand

Filed Apr. 24th 1861

L. Leland

clerk

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

MICHAEL LAWLER }
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3 of \$70 debt, besides costs of suit.

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Left it 10 days, took the stone nearly all out.

Left it in good condition of Saturday night, on Monday morning it was caved in. Had to abandon and dig a new one. Don't know but the old well might have been gone on with. There was not more than a foot or 18 inches of water left in the old well.

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11 Came back on Monday and found the well caved in. We did not take out any stone after that ; the old well was 34 feet deep.

Re-examined by plaintiff :

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I offered to dig a well for defendant for 75 cents a foot, nothing said about size. Minard said he could hire an Englishman for 75 cents a foot. I said this to banter him ; I never dug a well for 75 cents a foot. I did not mean to dig it for that price.

13 The plaintiff here rested his case.

The defendant to maintain the issue on his part then called A. R. McWayne, who being duly sworn, testified as follows :

I am acting Justice of the Peace within and for Kane county, and have been since the first of November, 1859. This is my docket. Here docket produced.

The Defendant then offered to read in evidence from said Docket a judgment obtained against Ira Minard in favor of Michael Lawler ; plaintiff objected to the reading of said judgment.

Which objection was sustained by the Court.

To the ruling of the Court in sustaining such objection, defendant then and there excepted.

Judgment docket sets out a judgment in favor of Lawler and against Minard for the sum of \$70 and costs, and is in the usual form of Justices' judgments.

14 The defendant then offered to read in evidence from said docket a judgment against Michael Lawler and in favor of Benjamin F. Bettsworth

Judgment in favor of Bettsworth after a trial before said Justice, in which both parties appeared for the sum of \$15 and costs. January 4th, 1860, on oath of plaintiff, execution issued. January 7th, 1860, execution returned, no property found by constable.

To the reading of which judgment in evidence to the jury the plaintiff objected, which objection was sustained by the Court. Exception taken. 15 The defendant offered to read in evidence the execution and the return by the constable, issued by the said A. R. McWayne, Justice; the execution of which was duly proven by said witness, execution against Lawler and in favor of Bettsworth. The execution in the usual form of Justices' executions, (full copy of all these papers in the records.)

16 To the reading of which execution in evidence, plaintiff objected. Objection sustained, exceptions taken.

Defendant then offered to read in evidence an affidavit by Benjamin F. Bettsworth, (the execution of which was proven by said witness) for a garnishee summons against Ira Minard, (said affidavit being in the usual form of affidavits for garnishee summons) to the reading of which in evidence the plaintiff objected, objection sustained by the Court; exception taken by defendant. 17

The defendant then offered to read in evidence a garnishee summons and the return thereon, by the constable, which was duly proven by said witness, against the said Minard and in favor of said Bettsworth, (which summons was in the usual form, a garnishee summons, and duly served by constable.) 18

19 To the reading of which in evidence the plaintiff objected; objection sustained by the Court; exception taken by defendant.

The defendant then offered to read in evidence from the docket of said Justice, a judgment rendered against said Minard as garnishee, and in favor of said Bettsworth, for the sum of \$19.60, besides costs, and the receipt of said Bettsworth on said docket of said judgment and costs in 20

full; to the reading of which judgment in evidence the plaintiff objected, objection sustained; exception taken by defendant.

The defendant then offered to prove that said judgment in favor of said Bettsworth and against said Minard as garnishee, had been fully paid and satisfied by said Minard, to the introduction of which evidence, the plaintiff objected; objection sustained; exception taken by defendant.

21 Witness then testified that A. H. Barry brought into his office from A. V. Sill, Justice of the Peace, transcript of judgment in favor of Michael Broderick, against Michael Lawler. Barry and witness figured up costs, and judgment of Broderick and Bettsworth judgment, and Barry paid witness balance of Lawler's judgment. Lawler took an appeal on the last day. Witness informed him what had been done and he refused to receive the balance of the money; that said Lawler came to the office of said Justice on the last day on which an appeal in the case of Lawler vs. Minard, could be taken, and that he said witness then informed said Lawler of the amount of money that had been paid to said Bettsworth on said garnishee judgment. He also informed said Lawler of the amount of money paid upon a garnishee judgment in favor of Michael Broderick and against said Minard. And that, he said McWayne, then offered to pay said Lawler the amount due on his judgment against said Minard after deducting the amount paid on the garnishee judgments in favor of Bettsworth and Broderick, which Lawler refused to receive.

Defendant then called Alexander V. Sill, who testified as follows:

22 I am an acting Justice of the Peace, for the county of Kane, and have been since the 1st day of November, 1859, until the present time; (book presented to witness) this is my docket. The defendant then offered to read from said docket a judgment rendered by said Justice in favor of Michael Broderick and against said Michael Lawler, (the entry of said judgment being in the usual form,) to the reading of which in evidence the plaintiff objected; objection sustained by the Court; exception taken by defendant.

23 Defendant then offered to read in evidence the execution in favor of said Broderick, and against said Lawler, upon said judgment, and the return of the constable on said execution. which execution and return was duly proven by said witness, (which execution and return of constable are in the usual form.) To the reading of which in evidence the plaintiff objected; objection sustained; exceptions taken by defendant.

Defendant then offered to read in evidence the affidavit of Michael Broderick, (the execution of which was duly proven by said witness) for a garnishee summons against Ira Minard.

25 To the reading of which in evidence the plaintiff objected; objection sustained; exception taken by defendant.

26 Defendant then offered to read in evidence a garnishee summons issued by said Justice in favor of Michael Broderick and against Ira Minard and the return of the constable on said summons, the execution of which summons and return thereon was duly proven by said witness, (and in the usual form,) to the reading of which summons and return thereon the plaintiff objected, objection sustained; exceptions taken by defendant.

27 Defendant then offered to read in evidence from the said docket, a judgment rendered by said Justice, in favor of said Broderick against said Ira Minard, to the reading of which in evidence the plaintiff objected; objection sustained; exceptions taken by defendant.

Defendant then offered to prove by said Sill that said judgment had been fully paid to said Broderick by said Minard. To the giving of which in evidence the plaintiff objected; objection sustained; exceptions taken by defendant.

28 Defendant then called Benjamin F. Bettsworth, who testified as follows:

I am acquainted with the parties; knew the work of plaintiff in taking up old well and digging new one; They commenced taking up old well on Monday; worked until Wednesday, then left and were gone 13 days; came back on Wednesday, worked until Saturday night; came back again Monday morning; think the well was in no worse condition than when they left it Saturday night; old well taken up because it was stoned to small; was 34 feet deep; new 52 feet and 9 inches deep; Lawler did not work well taking up old well; Broderick wanted him to work more; old well was not convenient; think old well might have been taken up and re-stoned.

Cross examined.

Ain not a well digger.

Defendant then called John Bettsworth, who testified as follows:

29 Know the parties to this suit; acquainted with Broderick and Lawler when they were digging the well; saw them every day; they did not work steady; would work an hour or so and then quit; Lawler would come out of well and lie down in shade of hay stack; think they did not work steady, in taking up old well or digging new one; old well was caved in a strip about 3 feet long and 6 inches thick; saw the old well six weeks after, it was not caved in any more than when they left; it not cave in; we filled it up; saw Lawler often when I thought he was intoxicated; saw them drink occasionally.

Cross examined.

Was not much acquainted with Lawler when he began work on the well ; have seen folks drink whisky before when digging wells, but not so much.

Plaintiff here admitted defendant had paid him \$8, to apply on work.

Defendant then called John McGilfra, who testified as follows :

Saw Lawler and Broderick when they worked on Minard's wells ; they did not work very steady ; Lawler would come out of the well and lie down ; saw them drink whisky several times ; saw the old well ; it did not cave in any more after they left it.

Cross examined.

Have seen others drink when digging wells ; did not go down into the well.

30

Defendant here rested his defence.

The plaintiff re-called Michael Broderick, who said Lawler did not come out of well often to rest ; quick sand thick in bottom, and some water in bottom of well ; new well was larger than common wells.

Plaintiff then called James Piece, who testified as follows :

I worked for Minard at time new well was dug ; Took the men out to take up well, and drew the stone from the river for Minard ; was some water in old well ; could not sink a bucket.

Plaintiff then called George Robinson, who testified :

I heard a conversation between Minard and Broderick ; Broderick wanted to borrow money, Minard said he would not lend money to his own brother ; told Broderick to wait and get his judgment of Lawler and he would have money ; did not hear Minard advise Broderick to sue Lawler or garnishee him, Minard.

The above is all the evidence given on the trial.

The plaintiff then asked and the Court gave the following instructions.

To the giving of which the defendant by its counsel excepted.

Copy of instructions given by plaintiff :

31 "If the jury believe from the evidence that the plaintiff dug and stoned a well for the defendant, and during the progress of the work was aware of said work being done, and that it was done with his consent, then the jury should allow the plaintiff the amount proven that said work was worth."

"If the jury believe from the evidence that the defendant employed the plaintiff to stone up an old well for the purpose of sinking it deeper, and through some defect or accident over which the plaintiff had no control, abandoned that work, and dug a new well with the approbation and consent of the defendant, then the plaintiff has a right to recover pay for his services on the old well."

To the giving of which instructions to the jury, the defendant by his counsel then and there and at the same time excepted.

The defendant then asked the Court to give, and the Court gave the following instructions to the jury :

32 "The only question to be determined in this case, is the question of indebtedness of the defendant to the plaintiff, and unless the plaintiff has proved a special contract, then all the plaintiff is entitled to recover is the amount which the services were proved to be worth, taking the evidence into consideration."

"The plaintiff, in order to recover pay for board, while doing the work is bound to prove that he boarded himself, or paid, or was liable to pay for the same, and if he has failed to prove the fact, he cannot recover for the same."

"Before the plaintiff can recover for the work of Broderick, he must prove to the satisfaction of the jury that Broderick was working for Lawler, and if he has failed to prove this fact, then he, Lawler, cannot recover for the work of Broderick."

"If the jury believe from the evidence that the plaintiff, Lawler, undertook to do a job of work for the defendant, Minard, and they further believe from the evidence that Lawler neglected the work after beginning the same, or that Lawler did the work in a negligent or unskillful manner, so that injury resulted to Minard from such negligence or unskillfulness, then the jury should take that fact into consideration in making up their verdict."

33 "If the jury believe from the evidence that the plaintiff Lawler, undertook to take the stone out of the old well for Minard and restore the

same, and if the jury further believe from the evidence that Lawler after doing a part of the work, and then went away and neglected the work in an improper manner, so that injury resulted to Minard from such negligence, then the jury have the right to take such injury in the account in making up their verdict."

"If the jury believe from the evidence that Broderick was working for Minard, and if they further believe from the evidence that Minard has paid said Broderick for such work, then Minard is not liable to Lawler for such work of Broderick."

ERRORS ASSIGNED BY THE DEFENDANT.

1st. The Court erred in receiving improper evidence on the part and behalf of the plaintiff.

2d. The Court erred in rejecting legal and competent evidence on the part and behalf of the defendant.

3d. The Court erred in giving improper instructions on the part and behalf of the plaintiff.

4th. The verdict of the jury is against the evidence.

5th. The verdict of the jury is against both the law and evidence.

6th. The Court erred in overruling the motion for a new trial.

7th. The Court erred in rendering judgment on the verdict of the jury.

W. D. BARRY,
Attorney for Defendant.

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Lawlar,

vs

Minard

Filed Apr. 22nd 1861

Louisa Leland
Clark

United States of America
State of Illinois Kane County }^{ss}

Plens before the
Honorable Isaac G. Wilson Judge of the Thir-
teenth Judicial Circuit of the State of Illinois
and Solo presiding Judge of the Circuit
Court of Kane County in the State aforesaid
and at a regular Term thereof begun and
held at the Court House in the Village of
Geneva in said County on the third Monday
being the twenty first day of May in the year
of our Lord One Thousand Eight hundred
and sixty and of the Independence of the
United States the Eighty fourth

Present The Hon. Isaac G. Wilson Judge of the 13th
Judicial Circuit
Edward J. Polyn States Attorney
of the 13th Judicial Circuit
Ethan J. Allen Sheriff of Kane County

Attest
Caleb R. Wright Clerk

Be it Remembered that heretofore to wit: on the
7th day of February AD 1860 There was filed in
the Office of the Clerk of said Circuit Court aforesaid
certain papers of an Appeal which are in the words
and figures following to wit.

Michael Lawler

vs

Ira Minard

December 10th 1859

Summons issued returnable

Sum 18^{3/4}

Docket 12/12

Desubj 38

1 " Sept 18

Cont + oath 19

6 oaths 38

entjns 28

Def Pnd 19

bad 1.50

Const fees

per sum 30

" spw 1.75

" " 1.25

330

Sept Pnd 175

bad 1.55

Sept 35

1.90

Witness

Ansies 50

E. Munroe 50

J. Durant 50

P. McFarland 50

2.00

P.M. delivered to Job S. Randall Constable

Dec 10th 1859 Subpoena issued at Plaintiffs request

Summons returned served by reading to defendant by

Job S. Randall Const fees 30- Plaintiffs

Subpoena returned served by reading to witnesses

therein named by J. S. Randall Const fees \$1.25

Dec 17th 1859 at the time set in the summons, Par-

ties appeared, defendant by B. B. Payne atty and

on request of defendant by attorney on oath Cause

adjourned until Dec 26th 1859 at 1 O'clock

at defendants costs which was paid (\$4.40)

Subpoena issue at Plaintiffs request. Subpoena

issued at defendants request. Plaintiffs Subpoena

returned served by reading to witnesses therein named

by Randall Const fees \$1.25- Defendants Sub-

poena returned served by reading to witnesses therein

named by J. S. Randall Const fees 35

Parties appeared and cause tried

& defendant, Michael Proderick E. Munroe

M. F. Bettsworth John Durant & Peter McFar-

land sworn as witness on the part of Plaintiff

and after argument by counsel cause submitted

and judgment rendered by me in favor of Plaintiff

appears
1.00

against defendant for seventy dollars debt besides
costs of suit

A. V. Sile & Munroe & Duranto Debt \$70.00

Peter M. Farlane plaintiffs witness Costs 5.40

claim fees Jan 14th 1856 came defendant &
paid twenty three 19/100 dollars (by A. H. Barry atty)
same date came Plaintiff and filed his bond for
appears James Kavanagh bondsmen

State of Illinois }
Kane County } I A. R. McWayne a
Justice of the Peace in and for
said County do hereby certify, that the foregoing trans-
cript and papers annexed contain a full and perfect
statement of all the proceedings had and of Judgment
rendered by me in the therein entitled Case,
Given under my hand and seal this 14th day of
Jan 1856

A. R. McWayne *Attest*
J.P.

Summons

State of Illinois } The People of
Kane County } the State of Illinois to
Any Constable of said County
Greeting:

You are hereby commanded to summons
Ira Mixard to appear before me at my office in
St Charles in said County on the seventeenth day of
December 1859 at the hour of one o'clock P.M. to

Answer the complaint of Michael Lawler for a failure to pay him a certain demand not exceeding one hundred dollars and herof make due return as the law directs. The said defendant is hereby also notified that the said plaintiff says that he has no witness ^{by whom} to prove his demand except it be by his own oath or the oath of the said defendant, and unless the said defendant appear at the trial of said Complaint the plaintiff will be permitted to prove his demand by his own oath as by law is directed in such cases

Given under my hand and seal at my office in St Charles in said County this 10th day of December AD 1839.

A. R. McWayne
Justice of the Peace

Said Summons is endorsed as follows to wit

Served by reading to the within named defendant this 12th day of Dec 1839.

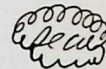
J. S. Randall Const "

Appeal Bond

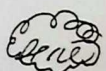
"Know all Men by these presents that we Michael Lawler and James Karanagh are held and firmly bound unto Ira Meiard in the penal sum of One Hundred & fifty dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs and administrators jointly severally and

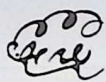
3
firmly by these presents, Witness our hands
and seals this 14th day of January A.D. 1860

The condition of the above obligation
is such that whereas the said Michael Lawler
did on the 26 day of December A.D. 1859 before
N.R. McWayne a Justice of the Peace for the
County of Kane recover a judgment against the
above named Ira Winard for the sum of, seventy
five dollars and forty cents; from which judgment
the said Michael Lawler has taken an appeal
to the Circuit Court of the County of Kane aforesaid
and State of Illinois. Now if the said
Michael Lawler shall prosecute his appeal with
effect, and shall pay whatever judgment may be
rendered by the Court upon dismissal or trial of said
Appeal, then the ^{above} obligation to be void, otherwise to re-
main in full force and effect.

Michael ^{his} Lawler 
_{mark}

Approved by me at my
Office this 14th day of
January A.D. 1860

James Kavnagh 

N.R. McWayne 

Justice of the Peace.

which said Appeal papers are endorsed as
follows to wit

Filed Feb 7th 1860
R.R. Wright Clk

(5) And afterwards to wit: on the said 7th day of

6 February AD 1860 There was issued out of the
said Clerk's Office and under the seal of said Court
an ~~appeal~~ Summons which is in the words
and figures following to wit

State of Illinois }
Kane County } The People of the State
of Illinois to the Sheriff
of said County, Greeting;

We command you to summon
Ira Minard if to be found in your County, per-
sonally 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 Geneva
on the third Monday of February instant to abide
by and perform the judgment of said Court, on a
certain Appeal, in a suit wherein Michael
Lawler is Plaintiff and Ira Minard is defend-
-ant and make due return of this writ.

Seal
of
Court
of
Kane
County
Ill.

Witness Paul R Wright Clerk
of our said Court and the Seal
thereof at Geneva in said County
this 7th day of February AD 1860
P. R. Wright
Clerk

Upon which said summons appears the following
endorsements to wit:

"Served this writ by reading to Ira

4
Minard this 9 day of Feb 1860

E. J. Allen Sheriff
by H. M. Clark Dep.

Filed February 20 1860

P. R. Wright Clerk

And afterwards to wit: on the 7th day of June
A.D. 1860 the same being one of the days of the
May Term of said Court A.D. 1860 the following
among other proceedings was had and entered of
record in said Court to wit:

Michael Lawler }

Appeal

vs
Jas Minard

This day comes the Plaintiff by
Wells & Poltford his attorneys and the defendant
by W. D. & A. H. Barry his attorneys also comes and
on motion of the Plaintiff it is ordered ^{by the Court} that a jury
come whereupon come a jury of good and lawful
men of the County to wit:

C. W. Coates James Isbell William H. Rose
A. H. Kenyon J. W. Bull A. L. White William
Prophy A. W. Glap Francis Webb John Elliott
Harry Eddy & Nelson Walker who being severally
elected and tried, are sworn to try the issues joined between
the parties in this suit and after hearing the evidence
by consent of ^{the} parties the jury are allowed to disperse
to meet the Court tomorrow morning

And afterwards to wit: on the 8th day of June as 1860 the same being as yet one of the days of the aforesaid May Term of said Court the following among other proceedings was had and entered of record in said Court, to wit:

Michael Lawler

Ira Minard

} Appeal

This day come again the parties by their attorneys and the jury heretofore empanelled herein also come and after hearing the arguments of counsel and instructions of the Court the jury retire under the charge of a sworn officer of the Court to consider of their verdict, and subsequently return into Court and for a verdict upon their oaths do say, We the jury find the issues joined for the Plaintiff and assess his damages at the sum of Ninety seven dollars and sixty nine cents which is ordered by the Court to be entered of record

Whereupon the defendant by his attorneys aforesaid moves for a new trial,

And afterwards to wit: on the 21st day of June as 1860 the same being as yet one of the days of the aforesaid May Term of said Court the following among other proceedings was had and entered of record in said Court to wit:

5-
Michael Lawlor

7283

Ira Minard

Appeal

This day comes the Plaintiff by Botsford his attorney and the defendant by Barry his attorney also comes, and the defendant's motion for a new trial heretofore entered herein coming on to be heard, after argument of counsel the Court being fully advised overrules said motion.

It is therefore considered by the Court that the plaintiff have and recover of the defendant the sum of ninety seven dollars and sixty nine cents damages and also his costs in this suit expended and that he have execution therefor.

Thereupon comes the defendant by A. T. Barry his attorney aforesaid and prays an appeal from the judgment herein to the Supreme Court of the State of Illinois which is allowed by the Court on condition that he files his appeal bond with A. T. Barry as surety in the penal sum of three hundred dollars, conditioned as required by law in thirty days from this date.

And afterwards ⁽⁶⁶⁶⁶⁾ to wit: on the 23rd day of June A.D. 1860 there was filed in the said Clerk's Office a bill of exceptions which is in the words and figures following to wit:

State of Illinois }
Kane County } ss

Kane County Circuit
Court of the May Term
A.D. 1860

18 Michael Lawler }
vs } Appeared from A.R. Mc
Ira Minard } Wayne a Justice of the Peace
within and for the said County of
Kane and State of Illinois

Be it Remembered that on this seventh day of
June A.D. 1860 it being one of the days of said May
Term of said Court this cause comes on to be heard
before the Hon Isaac G. Wilson Circuit Judge
and the jury duly empanelled and sworn to try
the issue.

The plaintiff to maintain the issue on his
part called Michael Broderick a witness who was
duly sworn & testified as follows: I know the plain-
-tiff Michael Lawler - he worked for Minard - took
up an old well and dug a new one - we worked
eight days taking up the old well - begun on Wed-
-nesday worked four days and left it and was gone
ten days to the United States Fair - went back and
took the stone nearly all out - left it in good condition
on Saturday night and when we went back on Monday
morning it was caved in at the bottom - we had to
abandon it and dig a new well, we went back Mon-
-day Morning - Lawler went down into the well I did
not - Bettenworth did not go into the well - it was
not my place I worked on top of the well - don't
know but the old well might have been gone on with -
there was not more than a foot or eighteen inches of

water left in the old well, we dug a new well - I worked with him the new well it was fifty two or fifty three feet deep and stoned up - most of the stone came from the old well, Some new stone was brought from the river, Two or three loads, They were brought by Minard's team, Minard's team drew them - Minard and I measured the well - I did not hear Minard find any Janet - didn't say anything about it we worked twenty six days and a half each on both wells I was at work for the Plaintiff Lawler

On crop examination he answered as follows It was about two weeks after we began on the old well before we left it - we took out part of the stone and left it ten days - we took out about sixteen feet - we did not work from Thursday to Monday - we broke a sick and went down town - came back Monday and found the well caved in - we did not take out any stone after that the old well was thirty four feet deep we worked twenty six days and a half on the wells we worked twenty six days and a half each - in all - eighteen days and a half digging the new well - I and Lawler worked four days on the old well after he came back from the fair, we began Thursday and worked either one or two days and left it - we did not go back on Monday went back on Thursday - we worked a day or so and broke a sick and left it we came back Monday

Re examined by counsel for Plaintiff

He began work on the old well on Wednesday we worked four days and left it and was gone ten days

we went back Wednesday and broke a pick and left it. we went back on Thursday and worked till Saturday night - we left the well Saturday night - we went back Monday morning morning and found the well caved in - the quick sand was in the bottom.

The plaintiff then called Peter McFarland who being sworn testified as follows:

I am a well digger - have dug wells seven or eight ~~years~~ years. I charge one dollar a foot for the first twenty feet and I add two shillings a foot for every ten feet after that and be boarded a six feet well is worth ten shillings a foot for the first twenty feet adding two shillings a foot for every ten feet after that. It is worth two dollars and seventy five cents a day for two men and tools taking up the old well.

Cross examined by counsel for the defendant
I offered to dig a well for Minard for six shillings a foot - there was nothing said about the size being the same as this well - Minard said he could hire an Englishman for that price I told him I could dig a well as cheap as any other man - I said this to bait him. I never dug a well for six shillings a foot in my life. Minard said the well would be from eighteen to twenty five (25) feet deep. I did not mean to dig it for that price it was worth more.

The plaintiff here rested his case

7
The defendant then called A. R. McWayne who was duly sworn and testified as follows:

I am an acting Justice of the Peace within and for the County of Kene and have been since the first day of November AD 1839. This is my Docket (here Docket produced) The defendant then offered to read in evidence from said Docket a judgment against Ira Minard and in favor of Michael Lawler to the reading of which judgment the plaintiff by his counsel objected for the reason that the defence to sustain which the docket was offered in evidence was not a legal defence & that it was matter which had arisen since the commencement of this suit and that this was the first notice that the plaintiff had had of any intention on the part of the defendant to interpose such a defence which objection was sustained by the Court to which ruling of the Court in sustaining such objection the defendant by his counsel then and there objected and at the same time excepted.

Michael Lawler } (which follows)

85
Ira Minard }

On oath of Plaintiff that he had no witness by whom to prove

Summons 31

Subj. his demand except defendant or his own oath

Contract 18 1839 Dec 10 1839 Special Summons issued

6 oaths wit 38 delivered to J. S. Randall Const returnable Dec 17

Subj 18th 1839 at One o'clock P.M. delivered to J. S. &

Subj 23 Randall Const. Same date subpoena issued at

15th Plaintiffs request Summons returned served by reading

served by Randall Const fees 80 January 3rd 1860

8
written Pff Parties appeared and cause tried Ira Menard
Broo 50 and John Bettsworth sworn as witnesses on the part of
Bettsworth 50 plaintiff and Michael Broderick & John Kelly sworn
1.00 as witnesses on the part of defendant, after hearing ar-
Const fees - gument of counsel judgment was rendered in favor of
Sersum 30 Plaintiff against defendant for the sum of fifteen
Pff ent 80 dollars debt besides costs of suit

by 50
1.60
4.10
returning 50
A. R. McWayne J.P.
January 4 1860 on oath of Plaintiff execution
issued del to Job S Randall Const Jan 7 1860
Execution returned endorsed no property found by
Job S Randall Const fees 50^c.

To the reading of which judgment in evidence
to the Jury the plaintiff by his counsel objected which
objection was sustained by the Court to which ruling
of the Court the defendant by his counsel then and
there and at the same time excepted.

The defendant then offered to read in
evidence the execution issued by said A. R. McWayne
Justice of the Peace and the return thereon by the
Constable the execution of which was duly proven by
said witness which execution was issued upon the
judgment in favor of Benjamin F. Bettsworth
and against the said Michael Lawler
State of Illinois } which is as follows,
Kane County & The People of the State of
Illinois to any constable of said
County Greeting.

We command you that of the goods

16.

and chattels of Michael Lawler in your County
you make the sum of fifteen dollars and cents
debt and four dollars and ten cents^{cts} which Benja-
min F. Bettsworth lately recovered before me in a
certain plea against the said Michael Lawler and
herof make return to me within seventy days from this
date. Given under my hand and seal this
fourth day of January A.D. 1860

A. R. McWayne J. P. *Red*

On the back of which is the following indorsements
"Came to hand Jan'y 4th 1860 9 o'clock A.M.
No property found Jan'y 7th 1860
fees 50 cts J. S. Randall Const
to the reading of which execution in evidence the
plaintiff by his counsel objected which objection was
sustained by the Court to which ruling of the Court in
sustaining such objection the defendant by his counsel
then and there and at the same time excepted.

The defendant then offered to read in
evidence an affidavit made by the said Benjamin
F. Bettsworth (the execution of which was duly proven
by the said A. R. McWayne) for a garnishee sum-
mons against the said Ira Minard (which is as follows)

State of Illinois?

Kane County &

Benjamin F. Bettsworth of said
County being duly sworn says that
on the third day of January A.D. 1860 a judgement
was rendered by A. R. McWayne a Justice of the Peace

9
within and for said County in favor of him the said Benjamin F. Betsworth and against Michael Lowen for the sum of fifteen dollars and cents debt and four dollars and ten cents costs of suit; that execution has been duly issued on said judgment against said defendant which has been returned by said Job S. Randall an acting Constable of said County "no property found" and this affiant avers that said defendant has no property within the knowledge of this affiant in his profession liable to execution; but this affiant hath just reason to believe that Ira Minard is indebted to said defendant or has effects or estate of said defendant in his hands - Wherefore this affiant prays that said Ira Minard may be summoned forthwith to appear to as garnishes agreeably to law

Benjamin F. Betsworth

Sworn to and Subscribed
before me this 7th day of
Jan. A.D. 1860

A. R. McWayne J.P.

To the reading of which in evidence the Plaintiff by his counsel objected which objection was sustained by the Court to which ruling of the Court in sustaining such objection the defendant then and there and at the same time by his counsel excepted

The defendant then offered to read in evidence a garnished summons and the return thereon by the Constable which was duly proved by the said

A. R. McWayne Justice of the Peace against
Ira Minard and in favor of the said Betsworth
State of Illinois } (which is as follows)

Kane County } The People of the State
of Illinois to any Constable of
said County Greeting: Whereas on the third
day of January A.D. 1860 a judgment was rendered
before me in favor of Benjamin F. Betsworth aga-
inst Michael Laxler for the sum of nineteen dollars
and ten cents debt and costs; and upon said judgment
execution has been duly issued and returned by Job.
S. Randall a Constable of said County no "property
found". And whereas affidavit has been made
and filed before me setting forth that said Michael
Laxler has no property within the knowledge of the
affiant in his possession liable to execution, but that
Ira Minard is indebted to said defendant or has effects
or estate of said defendant in his hands.

We therefore command you to summon the said
Ira Minard forthwith to be and appear before me
at my office in St Charles to answer as Garnisher
in said cause and to abide such order or judgment
as shall be made or rendered in the premises.

Given under my hand and seal at St Charles
this 7th day of January A.D. 1860.

A. R. McWayne J. P. Seal

On the back of which said summons is the following

10
return served by reading to Ira Minard this
7th day of January 1860

Job S. Randall Court
fee 30^{cts}

to the reading of which in evidence the plaintiff by
his counsel objected which objection was sustained by
the Court, to which ruling of the Court in sustaining
such objection the defendant by his counsel then and
there and at the same time excepted

The defendant then offered to read in
evidence from the docket of said justice, a judgment
rendered by said A. R. M. Wayne & justice of the
peace against the said Ira Minard and in favor of
the said Benjamin F. Betsworth, which said judg-
ment is in the words and figures following

Benjamin F. Betsworth

vs

Ira Minard Garnisher
of Michael Lawler

1860 Jan 7th

Plaintiff filed his affi-
-davit praying for gar-

-nisher summons and gar-

-nisher summons was by me issued some date & deliv-
-ered to Job S. Randall Const Jan 7 1860. Summons
returned served by reading to the defendant by Job S.
Randall Const fee 30^{cts} Jan 7th 1860 The said
Ira Minard garnisher herein neglected to appear
and answer^{no} said Garnisher and it is ordered that
the said Plaintiff have judgment against the said
Ira Minard as Garnisher herein for the sum of nine-
-teen dollars and sixty cents besides costs herein

20 And when collected the same shall apply upon
the said judgment against the said Michael
Lawler in favor of said Benj. F. Betsworth
Jan 14 1860 Came defendant by 19 60
Att Barry and paid on the above Costs 94
Judgmt twenty dollars 84 cts

A R McWayne J.P.

Rec^d the above judgment fifteen dollars & fifty-
cents it being the original amt debt against
Michael Lawler defendant in execution & Betsworth's
witness fees Feb 2^d 1860

Benjamin F. Betsworth

To the reading of which judgment in evidence the
plaintiff by his counsel objected which objection was sus-
tained by the Court to which ruling of the Court in sus-
taining such objection the defendant by his counsel then
and there and at the same time excepted.

The defendant then offered to prove
by the said A. R. McWayne that said judgment
in favor of the said Benjamin F. Betsworth and
against the said Ira Mmard as garnishee had been fully
paid and satisfied by the said defendant Ira Mmard
to the introduction of which evidence the plaintiff by his coun-
sel objected which objection was sustained by the Court
to which ruling of the Court in sustaining such objection
the defendant by his counsel then and there and at the

return Served by reading to Ira Minard this
7th day of January 1860

Job S. Randall Const
fess 30^{cts}

to the reading of which in evidence the plaintiff by
his counsel objected which objection was sustained by
the Court, to which ruling of the Court in sustaining
such objection the defendant by his counsel then and
there and at the same time excepted

The defendant then offered to read in
evidence from the docket of said justice, a judgment
rendered by said A. R. McWayne a justice of the
peace against the said Ira Minard and in favor of
the said Benjamin F. Betsworth, which said judg-
ment is in the words and figures following

Benjamin F. Betsworth

vs

Ira Minard Garnishee
of Michael Lawler

1860 Jan 7th
Plaintiff filed his affi-
-davit praying for gar-
-nisher summons and gar-

-nisher summons was by one ifened some date & deliv-
-ered to Job S. Randall Const Jan 7 1860. Summons
returned served by reading to the defendant by Job S.
Randall Const fee 30^{cts} Jan 7th 1860 The said
Ira Minard garnishee herein neglected to appear
and answer^{ss} said Garnishee and it is ordered that
the said Plaintiff have judgment against the said
Ira Minard as Garnishee herein for the sum of nine-
-teen dollars and sixty cents besides costs herein

20 And when collected the same shall apply upon
the said judgment against the said Michael
Lawler in favor of said Benj. F. Betsworth
Jan 14 1860 came defendant by 19 60
Att Barry and paid on the above Costs 94
judgmt twenty dollars 52 cts

A R McWayne J.P.

Rec^d the above judgment fifteen dollars & fifty-
cents it being the original amt debt against
Michael Lawler defendant in execution & Betsworth's
witness fees Feby 2^d 1860

Benjamin F. Betsworth

To the reading of which judgment in evidence the
plaintiff by his counsel objected which objection was sus-
tained by the Court to which ruling of the Court in sus-
taining such objection the defendant by his counsel then
and there and at the same time excepted.

The defendant then offered to prove
by the said A. R. McWayne that said judgment
in favor of the said Benjamin F. Betsworth and
against the said Ira Menard as garnishee had been fully
paid and satisfied by the said defendant Ira Menard
to the introduction of which evidence the plaintiff by his coun-
sel objected which objection was sustained by the Court
to which ruling of the Court in sustaining such objection
the defendant by his counsel then and there and at the

11
same time excepted.

The said A. V. McWayne then testified that Al W. Barry brought in to his office from the office of A. V. Sill justice of the peace a transcript of a judgment in favor of Michael Broderick and against Michael Lawler. Barry and myself figured up the cost and judgment of Broderick and Bettsworth's judgments and Barry paid one the balance of Lawler's judgment. Lawler took an appeal on the last day. I informed him what had been done and he refused to receive the balance of the money - that said Lawler came to his office on the last day on which an appeal in this case of Lawler vs Mynard could be taken and that he said Mr. Wayne then informed said Lawler of the amount of money that had been paid to said Bettsworth on said garnishee judgment he also informed said Lawler of the amount of money paid upon a garnishee judgment in favor of Michael Broderick and against said Mynard and that he said Mr. Wayne then offered to pay said Lawler the amount due on his judgment against said Mynard after deducting the amount paid on the garnishee judgments in favor of Bettsworth and Broderick which Lawler refused to receive.

The defendant then called Alexander V. Sill who was duly sworn and testified as follows

I am an acting justice of the Peace within and for the County of Kane and have been
21 Since the first day of November AD 1839 until

22 the present time (book here presented to witness
this is my docket; The defendant then
offered to read in evidence from the docket of said
Justice a judgment rendered by said Justice in
favor of Michael Broderick and against Michael
Lawler (which is as follows)

Michael Broderick }
vs } Suit on Acct Demand \$29.00
Michael Lawler } Summons issued Dec "5" return
= Able 10th inst at 10 o'clock AM

Demo & Dec 31

1 Subpoena 18th Subpoena issued same time for Plff, Summons returned
entire 20 by J. S. Randall Cons. endorsed "Served by reading
to defendant" Subpoena ret^d served by J. S. Randall
Cons. at the time set parties present and defendant
Cons. 30 admitted to a demand of \$27.50 as due Plff which
Sub. 30 Amt is entered as judgment against def^t with costs
Wd. 30 St. Betteworth attended as witness & claims fee. On
2,03 oath of Plff execution issued Dec 12th 1859 del^d
Oath & ex 31 to Randall, execution returned as properly found
Ret by 30 Dec^r 31st 1859

Resd cash Rec^d the above judg^t of Ira Minor
Ar. Side in Judg. against him as garnishee & received on
J. S. Randall page 93 Michael Broderick

To the reading of which judgment in evidence
the plaintiff by his counsel objected for the same reasons that
he before objected to the docket of M^cWayne which ob-
jection was sustained by the Court, to which ruling of the

Court in sustaining such objection the defendant then and there and at the same time excepted.

The defendant then offered to read in evidence the execution issued by said justice in favor of Michael Broderick and against Michael Lawler upon said judgment and the return of the Constable on said Execution which execution and return was duly proved by said witnesses (which is as follows)

State of Illinois }
Kane County } ss The People of the State of
Illinois to any Constable of said
County Greeting:

We Command you that of the goods and chattels of Michael Lawler in your County you make the sum of twenty seven $50/100$ Dollars debt and two Two dollars costs which Michael Broderick lately recovered before me in certain plea against the said Michael Lawler and hereof make return to me within seventy days from this date.

Given under my hand & seal this 12th
day of Decr 1859

Alexander V. Sill J.P. 

On the back of said process are the following
indorsements.

"Came to hand Dec 12th 1859
1 O'clock P.M."

"No property found subject
to execution this 30 day of December 1859

J. S. Randal Const
for 50 cts

To the reading of which in evidence the Plaintiff by his counsel objected which objection was sustained by the Court to which ruling of the Court in sustaining such objection the defendant by his counsel then and there and at the same time excepted.

The defendant then offered to read in evidence the affidavit of Michael Broderick (the execution of which was duly proved by said witness) for a garnishee summons against Ira Winand the defendant which is as follows

Michael Broderick vs Michael Lawler
State of Illinois }
Kane County } ss Before A. V. Sill Justice of the
Peace. Michael Broderick

The Plaintiff in the above entitled suit being sworn on oath says that he lately recovered a judgment in said suit before Alexander V. Sill a Justice of the Peace of said County against Michael Lawler for the sum of \$27.50 debt and \$2.86 costs of suit, that an execution has been lately issued on said judgment and returned by a constable of said County "no property found", that said Michael Lawler has no property within deponents knowledge in his possession liable to execution, that deponent has just reason to believe and does believe that Ira Winand is indebted to said Michael Lawler or has effects of said Lawler in his hands

Subscribed & sworn to before } Michael Broderick
me this 2^d day of Jan'y 1860 }
Alexander V. Sill J.P.

To the reading of which affidavit in evidence the Plaintiff by his counsel objected which objection was sustained by the Court, to which ruling of the Court in sustaining such objection the defendant by his counsel then and there and at the same ^{time} excepted.

The defendant then offered to read in evidence a garnishee summons issued by the said Alexander V. Bell justice in favor of the said Michael Broderick and against the said Ira Minard and the return of the Constable on said summons the execution of which said summons and the return of the Constable thereon was duly proved by said witness, which is as State of Illinois follows

Hane County for The People of the State of Illinois to any Constable of said County Greeting,

Whereas Michael Broderick has this day made oath before the undersigned a justice of the Peace that he lately recovered a judgment before the undersigned a justice of the peace of said County against Michael Lawler for the sum of twenty seven $\$100$ dollars debt and five $\$4.00$ costs of suit that an Execution has been lately issued on said judgment and returned by a Constable of said County "no property found" that said Lawler has no property within deponents knowledge in his possession liable to execution that deponent has just reason to believe & does believe that Ira Minard is indebted to the said Michael Lawler or has effects of the said Lawler

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in his hands. Now therefore we command you that you summon the said Ira Minard to appear forthwith as garnishee before the undersigned at his office at St Charles in said County to answer what may be then and there objected against him.

Given under the hand & seal of the said justice this 2^d day of January 1860
 Alexander V Sill 
 Justice of the Peace

On the back of which said summons is the following return,

Served by reading to Ira Minard this
 2nd day of January 1860
 Job S Randall Const
 per 50 cts

To reading of which summons and the return of the Constable thereon in evidence the Plaintiff by his counsel objected which objection was sustained by the Court, to which ruling of the Court in sustaining such objection the defendant by his counsel then and there and at the same time excepted.

The defendant then offered to read in evidence from the docket of said justice a judgment rendered by said justice of the peace in favor of the said Michael Broderick and against the said Ira Minard which is as follows

Michael Broderick

vs

Ira Minard as
Garnishee vs Michael
Lawler

Garnishee Debt Demand

\$30.36

On affidavit being filed a
Garnishee summons issued

Docket &
affidavit 20 June time. Summons returned served on Ira Minard
Garn Summ 18 as Garnishee. Subpoena ret^d served by J. S. Randall
1 Sub 18 parties appeared and Garnishee declined to answer
O & Jud 31 under oath. Ex^g McWayne being sworn produced docket
in proof of a judgment being entered against Garnishee
and in favor of Defendant for an amount exceeding Plain
Comes fees 30 tiffs demand in this suit. It is therefore adjudged and
on Summ 30
on Sub 25 determined that Plaintiffs have judgment for the above
1,524 Sum. of \$30.36 and costs of suit

Rec^d costs
as due
J S Randall

Rec^d my demand in full
Michael Broderick

To the reading of which in evidence the Plaintiff by
his counsel objected which objection was ~~lost~~ sustained
by the Court, to which ruling of the Court the defendant
then and there and at the same time excepted. The
defendant then offered to prove by the said Alexander
V. Sill that said judgment had been fully paid and
satisfied to the said Michael Broderick by the said
Ira Minard to the giving of which in evidence the
Plaintiff by his counsel objected which objection was
sustained by the Court, to which ruling of the Court

in sustaining such objection
the defendant ^{by his counsel} then and there and at the same time
excepted.

The defendant then called as a witness Benjamin J. Bettsworth who being duly sworn testified as follows. I am acquainted with the parties to this suit - Knew the work of the plaintiff in taking up the old well and digging the new one, - They commenced taking up the old well on Monday worked until Wednesday and then they went away and were gone thirteen days. They came back on Wednesday and worked until Saturday night. They came again Monday morning. I think the well was in no worse condition than when they left it Saturday night - They went to work as I thought - The old well was taken up because it was stoned to small - The old well was thirty four feet deep. The new well is fifty two feet and nine inches deep. Lawler did not work well when taking up old well he dickered round a good deal. Broderick wanted him to work more. The old well was the most convenient as it was not so deep to draw water from but the new well was a little nearer the house - I think the old well might have been taken up and restored.

Cross Examined

I am not a well digger

The defendant then called John Bettsworth as a witness who being sworn testified as follows

I know the parties to this suit, was well acquainted with Broderick and Lawler when they

15-
were digging the well - I saw them every day - They did not work steady, They would work an hour or so and then quit - Lawler would come out of the well and lie down in the shade of the hay stacks - I think they did not work steady in taking up the old well or in digging the new one - The old well was caved in a strip about three feet long and six inches thick - I saw the old well about six weeks after and it was not caved in any more than when they left it - It did not cave in we filled it up - I saw Lawler often when I thought he was intoxicated saw them drink occasionally.

Crop Examined

I was not much acquainted with Lawler when he began ^{work} on the well have seen folks drink whiskey before when digging wells but not so much.

The Plaintiff here admitted that the defendant had paid him eight dollars to apply on the work.

The defendant then called as a witness John Mc Gilfra who being duly sworn testified as follows. I know the parties to this suit. Saw Lawler and Proderick when they worked on Almiard's wells. They did not work very steady. Lawler would come out of the well and lay down. I saw them drink whiskey several times I saw the old well. It did not cave in any more after they left it.

Crop Examined

I have seen others drink when digging wells I did not go down into the well. I live with Mr

Zabristin

The defendant here rested his defence

The Plaintiff then recalled Michael Broderick who said - Lawler did not come up out of the well open to rest. The quick sand was thick in the bottom and some water in the bottom of the well. The new well which we dug was quite a large one - larger than common wells.

The Plaintiff then called James Pierce who being sworn testified as follows: I worked for Minard at the time the new well was dug. I took the men out to take up the well. I was working for Minard at the time and drew the stone from the river for Minard - There was some water in the old well - I could not sink a bucket.

The Plaintiff then called George Coffin - son who being sworn testified as follows: I heard a conversation in the bank between Minard and Broderick - Broderick wanted to borrow some money - Minard said he would not lend money to his own brother - he told Broderick to wait and get his judgment of Lawler and he would have money - I did not hear Minard advise Broderick to sue Lawler or garnish him. Minard.

The foregoing is all the evidence offered or given on the trial of this cause both on the part of the plaintiff and defendant

The plaintiff then asked the Court to give and the Court gave the following instructions to the Jury

"If the Jury believe from the evidence that the plaintiff dug & stored a well for the defendant & during the progress of the work was aware of said work being done and that it was done with his consent then the Jury should allow the plaintiff the amount proven that said work was worth"

"Filed June 8th 1860 R. R. Wright Clerk"

"If the Jury believe from the evidence that the defendant employed the plaintiff to take up an old well for the purpose of sinking it deeper & through some defect or accident over which the plaintiff had no control abandoned that work & dug a new well with the approbation & consent of the plaintiff then the plaintiff has a right to recover pay for his services on the old well"

"Filed June 8th 1860 R. R. Wright Clerk"

To the giving of which instructions to the Jury the defendant by his counsel then and there and at the same time excepted.

The defendant then asked the Court to give and the Court gave the following instructions to the Jury

"The only question to be determined in this case is the question of indebtedness of the defendant the

Given
Plaintiff, and unless the plaintiff has proved a special contract then all the plaintiff is entitled to recover is the amount which the services were proved to be worth taking the evidence into consideration."

Filed June 8th 1860 R R W right clerk

Given
The plaintiff ^{in order} to recover pay for board while doing the work is bound to prove that he boarded himself or paid or was liable to pay for the same and if he has failed to prove this fact he cannot recover for the same."

Filed June 8th 1860 R R W right clerk

Given
"Before the plaintiff can recover for the work of Broderick he must prove to the satisfaction of the jury that Broderick was working for Lawler; and if he has failed to prove this fact then he Lawler cannot recover for the work of Broderick."

Filed June 8 1860 R R W right clerk

Given
"If the jury believe from the evidence that the plaintiff Lawler undertook to do a job of work for the defendant Minard; and if they further believe from the evidence that Lawler neglected the work after beginning the same or that Lawler did the work in a negligent or unskilful manner so that injury resulted to Minard from such negligence or unskilfulness then the jury should take that ^{fact} into consideration in making up their verdict."

Filed June 8th 1860 P. R. Wright Clerk

Given

"If the Jury believe from the evidence that the plaintiff Lowler undertook to take the stone out of the old well for Minard and restore the same; and if the Jury further believe from the evidence that Lowler after doing a part of the work and then went away and neglected the work in an improper manner so that injury resulted to Minard ~~resulted~~ from such negligence then the Jury have the right to take such injury in the account in making up their verdict."

Filed June 8th 1860 P. R. Wright Clerk

Given

"If the Jury believe from the evidence that Broderick was working for Minard & if they further believe from the evidence that Minard has paid said Broderick for such work then Minard is not liable to Lowler for such work of Broderick"

Filed June 8th 1860 P. R. Wright Clerk

The Jury then retired and afterwards came into Court with the following verdict.

"We the Jury find the issues for the Plaintiff and assess the damages at ninety seven & ⁶⁹/₁₀₀ dollars
\$97 ⁶⁹/₁₀₀ A. L. White

Filed June 8 1860 P. R. Wright Clerk

Foreman

The defendant then and there moved the Court for a new trial in this cause which motion was overruled by the Court and the Court then and there rendered

judgment upon said verdict to which ruling of the Court in overruling the motion for a new trial in this cause and judgment upon said verdict the defendant then and there and at the same time excepted and pray that this bill of exceptions may be signed by the Court which is done in open Court

Isaac G. Wilson

Which said bill of exceptions is endorsed as follows

Filed June 23rd 1860

R. R. Wright Clk

And afterwards to wit: on the 11th day of July A.D. 1860 there was filed in the aforesaid Clerk's Office an appeal bond which is in the words and figures following to wit:

Know all Men by these Presents that we Ira Leonard and A. W. Barry are held and firmly bound unto Michael Lawler in the penal sum of three hundred dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs and administrators jointly severally and firmly by these presents. Witness our hands and seals this ninth day of June A.D. 1860

The condition of the above obligation is such that whereas the said Michael Lawler did at the May Term of the Kane County Circuit Court A.D. 1860 and before said Court recover a judgment

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against the above bounden Ira Minard for the sum of ninety seven dollars and seventy nine cents from which judgment the said Ira Minard has taken an appeal to the Supreme Court of the State of Illinois.

Now if the said Ira Minard shall prosecute his appeal with effect and shall pay whatever judgment may be rendered upon dismissal or trial of said appeal then the above obligation to be void otherwise to remain in full force and effect.

Ira Minard *Read*
ATTY Barry *Read*
by W T Barry his atty

which said bond is endorsed as follows

Filed July 11 "1860

R. W. Wright, Clerk

State of Illinois }
Kane County } I Thomas L. Moore Clerk of the
Circuit Court in and for the said
County and State aforesaid do hereby certify that the
foregoing is a complete record in the case lately
pending in said Court wherein Michael Lawler was
Plaintiff and Ira Minard was defendant in an appeal
from the decision of A. R. McWayne a Justice of the
Peace in and for said County, comprising the original
papers before the Justice, appeal summons, all orders
of Court entered of record, the bill of exceptions & appeal
bond filed in said Court in said cause as appears
from the records and files of said Court in any

Office



Given under my hand and the seal
of said Court at Geneva in said
County this 13th day of April
A.D. 1861

T. C. Moore
Clerk

Michael Lander
vs
Ira Muiand

Errors assigned by defendant

The Court Erred in receiving improper Evidence
on the part and behalf of the plaintiff

The Court Erred in rejecting legal and competent
Evidence on the part and behalf of the defendant

The Court Erred in giving improper instructions
on the part and behalf of the plaintiff

The verdict of the jury was against
the Evidence

The verdict of the jury was against both the
Law and Evidence by ~~defendant~~

The Court Erred in overruling the motion for
a new trial

The Court Erred in rendering judgment
upon the verdict of the jury

W D Barry
Atty for Defendant

In Michael { State of Illinois Supreme Court
v { Third Term Decided
Michael Sawler } April Term A.D. 1861.

and now comes the same Michael
Sawler by Chas B. Hull, his Attorney and
says that there is no error in the Record
Chas B. Hull,
Atty for Appeller

228-72
Michael Sawler
vs
John Michael

File of 4

Filed Sept. 17. 1861
L. Deland
Clk.

54 Case by Bary