

No. 12966

Supreme Court of Illinois

Flagg

vs.

McLean County Bank

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 71.

Slagg
McLean Co, Bank

State of Illinois }
McLean County }^{ss.}

Edward Thorp being first duly sworn
says & swears that he is well acquainted with John
Nicolls and his business relations. - That said
Nicolls is worth from \$75,000. to \$150,000. after
payment of all his debts and liabilities. - this
affiant being of opinion that the last named sum
is the nearest correct estimate of the responsibility
of said Nicolls. - That said Nicolls owns large
quantities of improved real estate in this County
amounting to four or five thousand acres - And
further says not -

E. Thorp

Subscribed & sworn to before me }
October 14th 1859 - witness my }
hand & Notarial Seal - }
William M. Orme }

Notary Public for Bloomington in S. County State

State of Illinois }
McLean County }^{ss.}

John Boyd being first sworn says
swears that he is well acquainted with John
Nicolls and his business affairs. - This affiant &
said Nicolls having been recently in partnership.
That said Nicolls is worth \$100,000 in the opinion
of this affiant after payment of all his debts
and liabilities = And further says not -

Subscribed & sworn to before me }
October 14. 1859 - }
William M. Orme - Notary Public }

John Boyd

Wm. J. Flagg
vs.

McLean County Bank.

Admitt. of justification.

Filed Oct. 12. 1859
L. Leland
Clerk

STATE OF ILLINOIS,
SUPREME COURT,

ss. The People of the State of Illinois,
To the Clerk of the Circuit Court for the County of McLean Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of McLean County, before the Judge thereof, between The McLean County Bank

plaintiff, and William F. Flagg

defendant, it is said manifest error hath intervened, to the injury of the aforesaid defendant

as we are informed by his complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this seventeenth day of October in the Year of Our Lord one thousand eight hundred and fifty-nine.

L. Deland

Clerk of the Supreme Court,
by J. B. Rice Deputy



William F. Flagg

vs

The McLean County Bank

Writ of Error

This writ of Error is
made a supersedeas
and as such is to be
obeyed by all concerned

L. Leland
clerk
by J. B. Rieck
Deputy

Filed October 12, 1839

L. Leland
clerk



Know all men by these presents That we
William F. Flagg and ~~Samuel D. Bonds~~^{John Nicolls}, of McLean
County Illinois are held and firmly bound unto
The McLean County Bank of said County and State
in the penal sum of twelve thousand dollars to the
payment of which well and truly to be made we
do by these presents jointly and severally bind our-
selves our heirs executors and administrators.

Sealed with our seals and dated this day
of October A.D. 1859.

The Condition of the above obligation is such that
whereas the said William F. Flagg has obtained an
allowance of a writ of Error to operate as a
supersedeas upon a certain judgment rendered
in the Circuit Court of McLean County, Illinois,
in favor of The McLean County Bank
and against William F. Flagg for the sum of
Nine thousand seven hundred & ninety eight dollars
and ~~thirteen cents~~^{& costs of suit} -
Now if the said William F. Flagg shall pay the judg-
ment, costs, interest and damages in case the said
judgment of the said Circuit Court shall be af-
firmed in whole or in part and shall duly pro-
- ceute said writ of Error, then the above obligation
shall be void; otherwise in full force and virtue -

Taken and approved by me }
this day of October A.D. 1859 }

W. F. Flagg
John Nicolls



Wm F. Flagg
and John Nicolls

- to -

McLean Co. Bank

Supersedeas Bond

Filed Oct. 17. 1839

L. Leland
Clerk

Supreme Court of Illinois
Ottawa Term A.D. 1860

W^m F. Flagg - plaintiff in Error

vs.
The McLean Co. Bank

It is hereby agreed that the
above entitled Cause shall be
dismissed at Costs of plaintiff
in Error - and that plaintiff
in Error may withdraw the Super-
- sedes Bond -

April 17 1860

The McLean Court Bank
By Amosby Cook

W^m F. Flagg

By Swett & Orme-
his Attys.

No. 71 = Supreme Ct
3^d & 4th Division -
Wm F. Flagg
Pltff. in error

vs.

WLean County Bank

Agreement to dismiss

Filed Apr 17. 1868

L. Leland

Clk

1.
Pleas continued and held at the Court House in
Bloomington in the County of McLean. in the Eighth
Judicial Circuit of the State of Illinois. before the Hon. David
Davis Judge of said Court. in a certain action therein
pending. wherein "The McLean County Bank" was plaintiff
and William F. Flagg. was Defendant

Thursday December 17th 1857.

Court met pursuant to adjournment.

McLean County Bank

vs

In Assumpsit

William F. Flagg.

This day comes said plaintiff by its
Attorneys. and it appearing to the satisfaction of the Court that
said Defendant has been duly served with process herein at
least ten days prior to the first day of the present term of this
Court. and being three times solemnly called. comes not
but herein wholly makes default. Thereupon. it is adjudged
by the Court that said plaintiff hath sustained damages by
reason of the non-performance of certain promises in its
Declaration mentioned. but the amount thereof being unknown
to the Court. therefore it is ordered that a writ of Inquiry
issue for the assessment thereof.

Friday January 22^d 1858.

Court met pursuant to adjournment

M^cLean County Bank

vs

In Assumpsit

William F. Flagg

This day, this cause came on to be heard on the writ of Inquiry herein before ordered. And neither party requiring a Jury, and the Court having heard the evidence, and being fully advised in the premises, doth assess the damages of said plaintiff at Nine thousand, Seven Hundred and ninety Eight Dollars and thirteen cents. It is therefore considered by the Court that said plaintiff recover of said Defendant, the sum of Nine thousand Seven Hundred and Ninety Eight Dollars and thirteen cents (\$9798.13) the damages aforesaid in form aforesaid assessed, and likewise their costs in this behalf expended, and that they have execution therefor.

And afterwards at the regular December Term of said Circuit Court, to wit, on the 9th day of January A.D. 1857, further proceedings were had in this cause, as appears of record, to wit,

M^cLean County Bank

vs

In Assumpsit

William F. Flagg

And now at this day comes the M^cLean County Bank by Hanna & Scott its attorneys, And on motion, this cause is re-docketed. And now said plaintiff enters its motion to set aside the levy made by the Sheriff of M^cLean County by virtue of an Execution herein before issued, And the

Judge of this Court. being a party in interest in said motion thereupon. on his own motion. It is ordered by the Court. that the venue of this cause be changed from this County to the County of Macon. And the Clerk of this Court is ordered to transmit to the Clerk of the Circuit Court of said County of Macon. all the papers on file in this cause. together with a complete transcript of the records pertaining thereto.

And afterwards. to wit. on the 15th day of August. A.D. 1857 there was filed in the office of the Clerk of said Court. a certified copy of an order made by the Circuit Court of Macon County as follows. to wit.

At a regular term of the Macon County Circuit Court, begun and held at the Court house in Decatur on the 7th day of March 1857. Hon. Charles Emerson Presiding. J. G. A. Adair. Clerk. and John R. Eden. Prosecuting Attorney. The following among other proceedings, were had

Macon Co. Circuit Court. March 17th A.D. 1857

The McLean County Bank

vs

William F. Flagg.

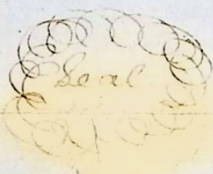
Change of Venue from McLean
Motion to quash Execution & lay

Now comes the said plaintiff by

Anna & Beatt. And the said Defendant by his attorney W. W. Arme And it appearing to the Court by the notice and affidavit filed herein. that said Defendant has been duly notified according to law of the pendency of this notice. and the same being fully heard by the Court upon the notice and

affidavits filed herein, and the Court being sufficiently advised in the premises. It is therefore ordered and adjudged by the Court, that the execution issued by the Clerk of the McLean Circuit Court on the Judgment of said McLean County Bank against said William F. Flagg, and the levy thereon be quashed & set aside and held for naught, and that an alias execution issue upon said Judgment.

State of Illinois }
 Macon County } ss
 J. G. A. Odor, Clerk of the Circuit Court
 within and for the County and State aforesaid, do hereby
 certify that the above is a true copy of the order in said suit
 as appears of record in my office.



In testimony whereof, I have hereunto affixed
 my hand and official seal at Decatur this
 22^d day of March, 1857.

J. G. A. Odor, Clerk.

And thereupon on said 15th day of August, A.D. 1857. The said
 McLean County Bank sued out an Alias Fieri Facias upon said
 Judgment from the office of the Clerk of the said Circuit Court
 of McLean County aforesaid, which Fieri Facias is in words
 and figures as follows, to wit,

State of Illinois }
 McLean County } ss
 The People of the State of Illinois
 To the Sheriff of said County, Greeting-

Whereas, by the Consideration of our Circuit Court

held at Bloomington in and for said County of McLean
 on the 23^d day of January in the year of our Lord One thousand
 Eight hundred and fifty eight. The McLean County Bank
 recovered Judgment against William F. Flagg for the sum
 of Nine thousand ~~Seven~~ hundred and ninety Eight ^{13/100} Dollars
 damages sustained by the said McLean County Bank in a
 Certain action of Assumpsit and also for the further sum of
 Eight Dollars costs of suit and accruing costs as appears of
 record. We therefore commanded you as we before commanded
 you, that of the Goods and Chattels, lands and tenements of the
 said William F. Flagg, you cause to be made the aforesaid sums
 of money, together with the interest on said Judgment at the
 rate of Six per Centum per annum from the time of recovering
 the same as aforesaid until paid, and that you have the same
 ready as soon as may be to render unto the said McLean County
 Bank, according to law. Hereof fail not, and make return
 of this writ with your doings endorsed thereon, within ninety
 days from this date.



Witness Wm. McCullough, Clerk of said Court
 and the Seal thereof at Bloomington this 15th day
 of August in the year of our Lord One thousand
 Eight hundred and fifty nine.

Wm. McCullough, Clerk
 By L. Barr, Deputy.

State of Illinois

McLean County

In the Circuit Court of said County.

Be it remembered also, that heretofore
 to wit, on the 14th day of September A.D. 1859, came

William F. Flagg, by Sawt & Come his Attorneys, and filed in the office of the Clerk of the Circuit Court of said County a "Notice" with a Certificate of the Judge of the ninth Judicial Circuit of the State of Illinois thereto attached which said "Notice" and "Certificate" were in words and figures as follows, to wit.

To the McLean County Bank

And Wm. P. Wathers, Sheriff of McLean Co. Ills.

You are hereby notified, that on the 15th day of September 1857, or so soon thereafter as Counsel can be heard, I shall by myself or my attorneys enter my motion in the Circuit Court of McLean County Illinois, at the term thereof then to be holden, to set aside, and quash an Execution issued out of the Clerks office of said Circuit Court on the 15th day of August 1857, on a Judgment in favor of said McLean County Bank and against me, which said Execution is now in the hands of the Sheriff of McLean County aforesaid. And by virtue of a Certificate issued in pursuance of the Statute in such cases made and provided, a copy of which is hereto annexed you are hereby notified to stay any further proceedings on said Execution.

Wm. F. Flagg,

Sept. 5. 1857.

by Sawt & Come, Attys.

State of Illinois }
La Salle County }

Whereas, It has been made known to the undersigned, M. E. Hollister, Judge of the 9th Judicial District of said State, that on the 15th day of August A.D. 1857, an

William F. Flagg, by Sawt & Come his Attorneys, and filed in the office of the Clerk of the Circuit Court of said County a "Notice" with a Certificate of the Judge of the ninth Judicial Circuit of the State of Illinois thereto attached which said "Notice" and "Certificate" were in words and figures as follows, to wit.

To the McLean County Bank

And Wm. P. Wathers, Sheriff of McLean Co. Ills.

You are hereby notified, that on the 15th day of September 1857, or so soon thereafter as Counsel can be heard, I shall by myself or my attorneys enter my motion in the Circuit Court of McLean County Illinois, at the term thereof then to be holden, to set aside, and quash an Execution issued out of the Clerks office of said Circuit Court on the 15th day of August 1857, on a Judgment in favor of said McLean County Bank and against me, which said Execution is now in the hands of the Sheriff of McLean County aforesaid. And by virtue of a Certificate issued in pursuance of the Statute in such cases made and provided, a copy of which is hereto annexed you are hereby notified to stay any further proceedings on said Execution.

Wm. F. Flagg,

Sept. 5. 1857.

by Sawt & Come, Attys.

State of Illinois }
La Salle County }

Whereas, It has been made known to the undersigned, M. E. Hollister, Judge of the 9th Judicial District of said State, that on the 15th day of August A.D. 1857, an

Execution was issued out of the office of the Clerk of the Circuit Court of McLean County and against the property of William F. Flagg. And whereas. It has been shown to said Judge. that said Flagg intends to move said Court to set aside said Execution at the next term of the McLean Circuit Court and that the Judge of said Court is interested in the cause. Now therefore. I the said M. E. Hollister. Circuit Judge of said Ninth Judicial Circuit do hereby certify that there is probable cause for staying further proceeding on said Execution until the order of said Circuit Court of McLean County upon said motion & do accordingly order a stay of said Execution until the further order of said Court.

M. E. Hollister

Attam. Aug. 30th 1857.

Cir. Judge of 9th Jud. Dis. Ill

Attached to said notice & Certificate is the following acknowledgment of service and affidavit. to wit.

I hereby acknowledge service of the foregoing writ and also of the Certificate of Judge Hollister hereto attached this 5th day of September 1857.

W. F. Withers.

Schff. McLean County.

State of Illinois }
McLean County }^{ss} William W. Come. being first duly sworn
says and swears that he served a copy of the foregoing notice and of the Certificate of Judge Hollister hereto attached on the McLean County Bank by delivering of said Copies to A. Gridley the President of said Bank this 5th day of September 1857

William W. Come.

And thereupon afterwards on the 15th day of September 1859
at the September term of said Circuit Court of McLean County
said motion came on to be heard before said Court and the
following order was made therein as appears of record. to wit.

McLean County Bank

vs

William F. Flagg.

Motion to Quash Execution.

And now at this day comes said
Defendant William F. Flagg, by Swett and Ome his attorneys
and also comes the McLean County Bank by Hanna &
Scott its attorneys. And said Defendant having entered
his motion to quash and set aside the Execution issued by
the Clerk of this Court on the 15th day of August 1859. upon a
Judgment rendered by said Court in the above entitled
cause, and said motion being argued by Counsel, and the
Court being fully advised, doth order that said motion be
overruled, and that said Defendant pay the costs of the same
And thereupon comes said Defendant and presents to the
Court his Bill of Exceptions to the ruling of the Court on said
motion, and prays that the same may be signed, and sealed
and made a part of this record.

Which said Bill of Exceptions was in words and figures as
follows. to wit.

McLean County Bank

vs

Motion to Quash Execution

William F. Flagg.

Be it remembered that on this 15th day of September 1857 came William F. Flagg, and entered his motion in the words and figures as follows. to wit,

State of Illinois } ss Of the Sept. Term. 1857 of the McLean
McLean County } Circuit Court.

McLean County Bank

vs

Motion to Set aside Execution &c.

William F. Flagg

And now at this day comes said William F. Flagg, by Swett & Orme, his attorneys, and moves the Court here to set aside and quash an execution issued out of the Clerks office of said Circuit Court in favor of said McLean County Bank and against said Wm. F. Flagg on the 15th day of August 1857. and now in the hands of the Sheriff of McLean County. and for reasons why the said Execution should be set aside, the said Flagg shews to the Court here, that said Execution is improperly issued from said McLean Circuit Clerks office, the record of said Cause not remaining in his office. And the whole cause having been sent by change of venue to Macon Co. and the said McLean Circuit Court having lost all Jurisdiction over said Cause, and the Macon Circuit Court having ordered an alias Execution to issue.

Swett & Orme

Attys for Flagg

And thereupon. offered in evidence on the hearing of said motion an affidavit and exhibits thereto attached in the words and figures following to wit.

State of Illinois } ss
McLean County }

William F. Flagg. being first duly sworn.

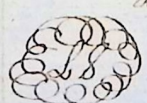
Says and swears. that a suit was commenced against affiant by & in favor of the McLean County Bank in the Circuit Court of said County and State. that at the December term A.D. 1858. to wit. on the 8th day of January 1859. of said Court. an order of said Court was duly made and entered of record in the records of said Court. of which a true copy is herewith filed marked "A". that in pursuance of said order. all the original papers on file in said Circuit Court of McLean County in said suit in favor of the McLean County Bank and against affiant were sent to the Clerks office of the Circuit Court of Macon County in said State where the same now are and remain. and as will appear by said order of said McLean Circuit Court the venue of said cause was changed to said Macon County.

Affiant further states that at the March Term. 1859. of said Macon County Circuit Court an order was duly made and entered of record. of which a full. true. and perfect copy is hereto annexed marked "B". That on the 15th day of August 1859. the said McLean County Bank procured and obtained the Clerk of the McLean Circuit Court to issue an execution against affiant. notwithstanding the venue of the cause in which said Execution issued. was changed to. and all the original files and papers were sent to the Macon County Circuit Court. as aforesaid as appears from said order

marked "A". Affiant further states that he intends to move the Circuit Court of McLean County at its next term thereof (or as soon thereafter as he can be heard by counsel) to set aside said Execution. Affiant further states that the Judge of the McLean County Circuit Court aforesaid had such an interest in said matters (as appears from said order marked "A") as to prevent affiant from making application to him for a certificate staying said Execution.

Wherefore affiant prays that a certificate may issue in pursuance of the Statute in such case made and provided, staying further proceedings on said Execution until the further order of the Circuit Court on the motion, and further says not
 Subscribed and sworn to before *Wm. F. Flagg.*

me. 24th 1857-

Wm. McCullough, Clerk of
 *McLean Circuit Court.*

By L. Brown, Deputy

Order of McLean Circuit Court. "A"

McLean Circuit Court. December Term. 1858.

The McLean County Bank

vs

William F. Flagg.

In Assumpsit

And now at this day comes the McLean County Bank, by Hanna & Scott its attorneys, and on motion, this cause is re-cketed. And now said plaintiff

enters its motion to set aside the levy made by the Sheriff of McLean County by virtue of an Execution herein before issued. and the Judge of the Court being a party in interest in said motion. thereupon. on his own motion. it is ordered by the Court; that the venue of this cause be changed from this County to the County of macon. and the Clerk of this Court is ordered to transmit to the Clerk of the Circuit Court of said County of macon. all the papers on file in this cause. together with a complete transcript of the record pertaining thereto.

Order of Macon Circuit Court "B"

Macon Circuit Court. Ills. March Term. 1859.

McLean County Bank	}	Change of venue from McLean
vs		Motion to quash Execution & Levy
William F. Flagg.		

Now comes the said plaintiff by Hanna & Scott. And the said Defendant by his Attorney, W. W. Cane. and it appearing to the Court by the notice & affidavit filed herein. that said Defendant. has been duly notified according to law. of the pendency of this notice. and the same being fully heard by the Court upon the notice and affidavits filed herein and the Court being sufficiently advised in the premises. It is therefore ordered and adjudged by the Court. that the execution issued by the Clerk of the McLean Circuit Court on the judgment of the said McLean County Bank. against said William F. Flagg. be quashed. set aside and held for naught. and

13.

that an alias execution issue upon said Judgment.

And a duly certified copy of the Order of the Macon Circuit Court. in words and figures following. to wit.

At a Regular Term of the Macon County Circuit Court. begun and held at the Court house in Decatur on the 7th day of March 1857. Hon. Charles Emerson. presiding. J. G. A. Ador. Clerk. John R. Eden. Prosecuting Attorney. the following among other proceedings were had

Macon County Circuit Court. March 17th A.D. 1857

The McLean County Bank

vs

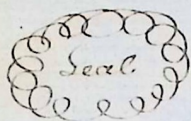
William F. Flagg.

Change of Venue. from McLean
Motion to Quash Execution & Levy.

Now comes the said plaintiff by Hanna & Scott. and the said Defendant by his Attorney W. W. Orme. And it appearing to the Court by the notice and affidavit filed herein. that said Defendant has been duly notified according to law of the pendency of this notice. and the same being fully heard by the Court upon the notice and affidavits filed herein. and the Court being sufficiently advised in the premises. It is therefore ordered and adjudged by the Court. that the execution issued by the Clerk of the McLean Circuit Court on the Judgment of said McLean County Bank against said William F. Flagg. & the levy made thereon be quashed and set aside and held for naught. and that an alias execution issue upon said Judgment

State of Illinois } ss

Macon County } J. J. Q. A. Odor, Clerk of the Circuit Court
Within and for the County and State aforesaid do hereby certify
that the above is a true copy of the order in said suit as
appears of record in my office.



In testimony whereof, I have hereunto affixed
my hand and official seal at Decatur this 22^d
day of March 1857

J. J. Q. A. Odor, Clerk.

And also the Original Order of the McLean Circuit Court in
the words and figures following, to wit,

The McLean County Bank

vs

William F. Flagg

In Assumpsit

And now at this day comes the
McLean County Bank by Hanna & Scott its Attorneys. And on
motion, this cause is re-docketed. And now said plaintiff enters
its motion to set aside the Levy made by the Sheriff of McLean
County, by virtue of an Execution herein before issued, and the
Judge of this Court, being a party in interest in said motion,
thereupon, on his own motion. It is ordered by the Court that the
venue of this cause be changed from this County to the County
of Macon, and the Clerk of this Court is ordered to transmit
to the Clerk of the Circuit Court of said County of Macon, all
the papers on file in this cause, together with a complete
transcript of the record pertaining thereto

Supreme Court of the State of Illinois
3rd Grand Division - To the April Term
for 1860 -

Wm F. Flagg

vs

The McLean County Bank } Error to the Circuit
Court of McLean Co

And now Comes the Said Flagg
Plaintiff in error - by Dickey Boal & Dickey
his attorney and says that in the foregoing
record, proceedings & Judgment, there is
manifest error & prays that reason of
said errors & irregularities - said judgment
and proceedings may be reversed & for
warrant held - and as Special Causes
~~of c.~~ statement of said errors assigns
the following -

1st The Court erred in rendering judgment
against the said defendant below -

2nd The Court erred in ordering a change
of venue in the said cause in
manner & form as the same was
ordered -

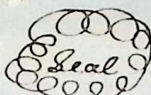
3rd The Court erred in refusing to quash
the said Alias Execution & in giving
judgment against said plaintiff in
error for costs on said motion -

Dickey Boal & Dickey

4th The Court erred in assessing the
damages without the intervention of
a jury -

Dickey Boal & Dickey
for plaintiff in error

And the Court thereupon, on hearing the evidence overruled said motion, to the overruling of which motion, the said J. J. then and there excepted and tendered this his bill of Exceptions and prayed the Court to sign and seal the same, which is done

David Davis 

State of Illinois }
McLean County } ss I, Wm. McCullough, Clerk of the Circuit Court in and for said County and State aforesaid, do hereby certify that the foregoing is a complete transcript of the records and files now remaining in my office, pertaining to the foregoing, cause, Judgment, and subsequent proceedings



Given under my hand and the Seal of the said Circuit Court at Bloomington this 10th day of October A.D. 1857

Wm. McCullough, Clerk

By Luman Burr, Deputy.

Clk's fees for record \$5.-

Set a supersedias issue. Bond
Twelve thousand dollars. John Nicols
Surety

J D Caton

Wm. F. Flagg,

vs.

W

McLean Co. Bank.

Transcript of Record.
Loss of Errors



Filed Oct 1st 1859.
L. Deland
Clerk

Clerk's fee for record \$5.