

No. 14709

Supreme Court of Illinois

People

vs.

Miller

Case 1258

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.
People's Causes.

No. 3

J. W. Middleton & Co., Stationers, 196 Lake St.

1864

1864
1862

People's
Cause
Miller

In the Supreme Court of the State of
Illinois -

April Term A.D. 1863

In the matter of the application
for a rule upon Orrin Miller
to show cause why his
name should not be
stricken from the roll
of Attorneys

And now comes
David P. Jones States
Attorney in & for said court
and moves the court
for a rule upon Orrin
Miller of the county of Kanebago
in the state of Illinois, to
show cause why his name
should not be stricken from
the roll of Attorneys
D. P. Jones

In the Supreme Court,

April Term 1863.

State of Illinois. }
La Salle County, ss. }

Francis Burnap, of the city of Rockford, in the county of Winnebago, attorney and counsellor at law, maketh solemn affirmation and oath, that on 10 May 1859, one John Rosenberg was in possession of a farm of this affiant, situate in the said county of Winnebago, as a purchaser thereof from this affiant, by an oral contract, which he refused either to fulfil or to reduce to writing, he having previously been in possession of the said farm as tenant thereof under this affiant. And this affiant further says, that the said farm consisted of eighty acres, and had a dwelling house and garden thereon; and that on said 10 May 1859, the said farm was sown to crops consisting of wheat, oats and Hungarian grass. And this affiant further says, that the said John Rosenberg set up claims against this affiant in respect to the said farm; and that on the said 10 May 1859, the said John Rosenberg and the agent and also the attorney of a manufacturing firm, creditors of the said John Rosenberg, called upon this deponent, to endeavor to settle the said claims; that after some debate, it was concluded that

this affiant should pay the said John Rosenberg \$400 for his said claim, and should give his note therefor to the said creditors, and should pay two hundred and ninety-two dollars for the crops then on the said farm, consisting of the said wheat, oats and Hungarian grass. And this affiant further says that the said John Rosenberg then informed this affiant that his son James D. Rosenberg owned the said crops, and that he had transferred to the said James D. Rosenberg all his right and title to the said farm, and he requested this affiant to make a promissory note to the said James D. Rosenberg for the said sum of \$292, and that this affiant on the same day, accordingly made his note for that sum, payable to the said James D. Rosenberg on the first day of June then next. And this affiant further says, that the said John Rosenberg and James D. Rosenberg at the same time executed to this affiant a release of all their right and title to the said land and crops, containing a covenant to deliver possession thereof to this affiant as soon as the said note for \$292 should be paid. And this affiant further says, that the said note for \$292 was not paid, and that the said John Rosenberg and James D. Rosenberg continued in possession of the said

form and crops, and harvested the said crops as soon, or nearly as soon as they were ripe and without delay except to thresh the said grain, carried them away and appropriated the same to their own use, as this affiant was soon afterwards informed, and this affiant never had or received any part thereof, or derived any benefit from the same, whereby the consideration for the said note of \$292 wholly failed. And this affiant further says that some time after the appropriation of the said crops by the said Rosenburgs, the said note for \$292 fell into the hands of Orrin Miller, an attorney of this court residing at Rockford aforesaid, and that he commenced a suit thereon against this affiant, in the name of one William L. Cook, ^{in the Circuit Court for the County of Winnebago,} on 12 September 1859. And this affiant further says, that during the progress of the said suit, he filed a bill of discovery in manery, against the said Cook, in regard to the said suit; and that in his answer to the said ~~suit~~ bill, the said Cook admitted that he had no interest in the said note owed on, and that the said suit was brought in his name by the said Miller, for the use of the said Orrin Miller, because the said Miller and this affiant were both attorneys, and members of the Rockford bar. And

L.L.

this deponent further says, ~~and~~ this affiant
fear that the said Miller has frequently avow-
ed in open court, that the said note belonged
to him, and that the said suit was for
his benefit; and that at a late trial in
the said suit, the said Miller produced a
witness who testified that the said James D.
Rosenburg indorsed the said note to him the
said Orrin Miller, and that he bought the same
of the said James D. Rosenberg. And this de-
ponent further says, that the said James D.
Rosenburg was and is a person of infamous
reputation; and this affiant has reason to
believe, and does believe, that the said Orrin
Miller gave him only some small amount
therefor. And this deponent further says,
that the said Orrin Miller made no inqui-
ry of this affiant, whether any thing was
justly due on the said note or not, and
this deponent further says, that the only wit-
ness he was ever able to find who knew the
fact that the said Rosenbergs took and dis-
posed of the whole of the said crops to their
own use, and removed the same, was one
Monson A. Chinsbury, a transient person, who
worked on the said farm during the spring
and summer of 1859; that this deponent

caused the deposition of the said witness to be taken in the said cense, at Washington, in the county of Pargewell, previous to the June term of the said Circuit Court, in 1860, showing the said facts. And this affiant further says, that during said June term, or in September term next thereafter, he this deponent had the said deposition in his hands in the court room of the said court, while the same was in session; and having occasion to go ~~into~~ the clerk's office, this affiant laid the said deposition down, and when he returned, the said deposition had disappeared; and this deponent was never able afterwards to find the same, and from the fact that the said Orrin Miller, according to his own showing, was the only person interested in preventing the said deposition from being given in evidence, and from the fact that his ^{and from things which have occurred since,} reputation for integrity is bad, this deponent has reason to believe, and does believe, that the said Orrin Miller took and secreted the said deposition. And this deponent further says, that previous to the February term of the said Circuit Court, in the year of our Lord one thousand eight hundred and sixty-one, this deponent caused the deposition of the said Thinsbury to be taken again in the

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said cause, at the same place as before, and the said deposition was given in evidence at a trial of the said cause at the said February term 1861. And this deponent further says, that a new trial having been granted in the said cause, this deponent continued the clerk of the said Circuit Court, not to permit the said Orrin Miller to take the said deposition out of his office, but about two or three months previous to February term of the said Circuit Court in 1862, this deponent ascertained from the said clerk, that the said Orrin Miller had taken away the papers in the said cause, including the said last mentioned deposition. And this deponent further says, that a short time afterwards, he inquired of the said Orrin Miller, for the said papers, and that after some delay, the same were sent to this deponent from the office of the said Miller, excepting the said deposition, which was not among them. And this deponent further says, that in three or four days or thereabouts afterwards, he this deponent inquired of the said Orrin Miller where the said last mentioned deposition was, and was informed by him that it was at his office. And this deponent further says, that the

said deposition was never returned into court, and he has never been able to find the same since. And this affiant further says, that the said Ambsbury testified in his said last deposition, that he was employed as a laborer on the said farm of this affiant, and assisted in raising and harvesting the crops raised thereon during the year one thousand eight hundred and fifty-nine; that he was paid for his services in that behalf, by John Rosenberg and James D. Rosenberg aforesaid, sometimes by the one, and sometimes by the other of them; and that the said John Rosenberg and James D. Rosenberg took and converted to their own use, all the crops raised on the said farm during the said year one thousand eight hundred and fifty-nine; and also that they carried away all the grain, wheat and oats raised there during that year, within a few days after the same were harvested; and that the same were partly taken away in the day time, and partly in the night. And this deponent further says, that the said cause was tried at the February term of the said Circuit Court now last past, and that a verdict and judgment were rendered therein against this affiant, from the want,

as he believes, of the said deposition; that the said Orrin Miller objected at the said trial, to proof being given of the contents of the said deposition, and that he took the said verdict and judgment, well knowing that this affiant wholly lost the benefit of the consideration for the said note, by the means aforesaid. And this affiant further says, that he has no doubt but that the said Orrin Miller took and sealed the said lost mentioned deposition, for the purpose of depriving this deponent of the benefit thereof, and of obtaining an unjust judgment against this deponent, and this deponent refers the justices of this Honorable Court, to the certified copy of the record in the said cause, on the files of this Court.

Francis Burnap.

Affirmed at Ottawa in the }
County of Le Salle, the 25th }
day of April 1863. before me. }
L. Deland C.D.

² 48 R. O. ²⁵²¹
In the matter of
the application
for rule upon Omie
Meller to show cause
why his name
should not be stricken
from Roll of Attys

Filed April 23. 1883
L. Leland
Clerk

The People of the State of Illinois } In the Supreme
 on information of Frances Burnap } Court - of the
 vs } State of Illinois
 Bern Miller } Bebe to show cause

State of Illinois
 Winnebago County

Fred D. Camman Real estate agent & Broker
 Leander Bander 1 Lieut Co-G. - 45th Reg. V.P. Inf.
 J. Miles Carriage maker Rockford
 C. Jerome Roberts Grocery & Bakery Rockford
 John Richee Farmer Howard
 Edward J. Mark Farmer Howard
 Geo. L. Griggs Boot & shoe Rockford
 William Lyman M.D. of Rockford
 Edmund Derwent - Miller Rockford
 J. B. Infant - Boot & shoe dealer Rockford
 H. C. Hotwell engraver of lith. of Rockford
 C. A. Dunsell Justice of the Peace in Cherry Valley
 Jesse Halsted Minister of the M. E. Church Rockford
 J. W. Yickner Grocer of Rockford
 C. O. Eaton do do do do do do
 L. J. Rughel Notary Public & Land agent do
 B. H. Chamberlain Boot & shoe dealer do

being first duly sworn upon oath - say

that they are and have been acquainted with Rufus J. Harway an attorney at Law residing first at the town of Neward and since at the City of Rockport Winnebago County Ill. and know his general reputation where he has and does reside for truth and veracity - That we know nothing and have heard nothing reliable against his general reputation for truth and veracity - that we know it to be good and that we would believe his statements under oath - That we have been acquainted with him for the time set opposite our names.

W. D. Cannan

5 Years

George Bender

5 years

Al. Miles

Acq

5 years

James Roberts

Acquainted

7 years

John Kiche

acquainted

20 years

Edward J. Mark

acquainted

18 years

Geo. L. Briggs

5 years

Wm. Lyman. M. D.

"

5 years

Edmond Descent

"

16 years

J. H. Mearns

7 years

Henry C. Shottwell

acquainted

5 years

C. A. Dismore

acquainted

4 years

Rev. Jesse Katoles

acquainted

20 years

D. W. De Krom

"

5 "

P. L. Eaton

5 "

O. J. Reed

5 "

B. H. Chamberlain

3

Subscribed and sworn to before me at Rockport
this 25th day of April 1864. J. C. G. [Signature]

254
Rufus J. Harway
April 28 1864
J. C. G. [Signature]
Rule changed -

The People of the State of Illinois } In the supreme
 an information of Francis Burnes } Court of the
 vs } State of Illinois.
 Orrin Miller }
 Rule to show cause

State of Illinois
 DuPage County ss

	Justices of the Peace
Joseph Corbitt	Graniger & Wright
William Randall	farmer. Lacon
Egna M Adams	Post-Master - Durant
L R Thurlbutt	Merchants himself
A G Huffman	farmer Durant
John A Johnson	Cabinet & furniture dealer
J H Goodring	farmer Howard
J M Goodrich	Justice of Peace "
Daniel H Smith	" "
L J Wilcox	" "
John A Johnson	farmer Howard "
E Rogers	Land dealer Durant
E L DeCharm	Druggist "
J M Wilcox	Hotel "
A J Morris	farmer Howard
A H Lanoung	Painter & Carpenter
J Porter	Tinner Durant
J M Garobee	Merchants himself

Being first duly sworn upon oath say
 that they are and have been acquainted
 with Rufus J Kewy an attorney at Law
 hitherto residing at Howard and now
 at Rockport in said County and State
 and know his general reputation for
 truth and veracity among his neighbors
 that it is got out that we have never

heard anything reliable against it
 that we would believe his statements
 under oath that we have been
 acquainted with him for the last 20
 years our names

Joseph Cornish	acquainted 16 years
Wm Randall	acquainted 18 years
Eva H. Adams	" 11
L. B. Hurlbut	" 7
A. H. Hoffman	6
John A. Johnson	acquainted 18 years
J. E. Woodring	6 years
D. M. Goodrich	11 15
Samuel A. Smith	Justice of the Peace
J. Wilcoxon	knows 10 years
E. Rogers	10 years
E. L. D. Cham	five years

Wm. Melson	Five years
A. J. Morris	Five years
A. H. Ganong	Six years
L. Porter	" "
J. H. Larabee	Six "

Filed April 28 1884
 L. L. Leland Clerk

2
 P. 11/11
 2
 M. 11/11



shown to a subscriber
 before me this 29th of April 1884
 J. Wilcoxon
 Justice of the Peace

2
At a Supreme Court, Begun and held at Ottawa, on Tuesday, the
21st day of April, in the year of our Lord one thousand eight hundred and
sixty-~~three~~ within and for the Third Grand Division of the State of Illinois:

Present, the Honorable JOHN D. CATON, Chief Justice;

" " PINKNEY H. WALKER, Associate Justice;

" " SIDNEY BREESE, Associate Justice.

Friday May 8. 1863

To The People of the State of
Illinois, on information of
Ervin Miller & others

U.S.

Reefus J. Harvey

Rule to show Cause &c

On this day the
court having fully examined the
affidavits of Ervin Miller & others filed
herein and the motion heretofore entered
herein by D. P. Jones states Attorney for this
court for a rule on the said Reefus J.
Harvey, to appear before the court & show
cause why his name should not be stricken
from the roll of the Attorneys of this
court, and the court being now suffi-
ciently advised of the premises, do order
that the said motion be sustained and
that the said Reefus J. Harvey be ruled
to appear before this court by the sixteenth
day of May A.D. 1863 and show cause
why his name should not be stricken

from the roll of attorneys of the state.

I, **LORENZO LELAND**, Clerk of the Supreme Court of the State of Illinois, Do
Hereby Certify, That the foregoing is a true copy of the final order
of the said Supreme Court
in the above entitled cause, of record in my office.

In Testimony Whereof, I have set my hand and affixed the seal of
the said Supreme Court, at Ottawa, this 14th day
of May in the year of our Lord one thousand
eight hundred and sixty-three.

L. Leland
Clerk of the Supreme Court.

In the Supreme Court of the State of Illinois
April Term, thereof A.D., 1863

In the Matter of the
Application of the people
&c upon the information
of Orrin Miller, for
a rule upon Rufus
J. Harvey to show
cause why his name
should not be stricken
from the roll of Attorneys

And now comes the people
of the State of Illinois by D.P.
Jones States Attorney & moves
the court for a rule upon
Rufus J. Harvey to show
cause why his name should
not be stricken from the
roll of attorneys.

D.P. Jones
States Attorney

State of Illinois }
Winnebago County } ss

Orin Muller being first duly sworn deposes and says that he was the Attorney for Valentine Lake in the case of said Lake vs. McCoy lately pending in the Winnebago Circuit Court and Rufus J. Harvey and William Brown Esq were the Attorneys for said McCoy. This affiant further says on said Trial Rufus Harvey drew two Instructions on behalf of the Defendant and gave them to the Hon. Benjamin R. Sheldon the Judge of said Court for inspection.

This affiant further says that the Court gave one and refused the other of said instructions and after he had written on said instructions "refused" and "given" he left them both, laying on his table and then left the bench for a few moments. This affiant further says after he had closed his remarks to the Jury, he went to the Court desk for the purpose of getting the two instructions for the purpose of drawing counter instructions if necessary but could find only one of them and that one was marked "given".

This affiant further says that he then asked Rufus J. Harvey how many instructions he had asked the Court to give and he replied but one. This affiant then asked the Court how many instructions Rufus J. Harvey had asked him to give the Jury, and he replied "two" and he had given one and refused the other—

This affiant then asked Rufus J. Harvey, where the instruction was that the Court had refused and he replied he did not know, he had not seen it since he had given it to the Court. The same question was repeated two or three times and the same answer was made to them.

This affiant further says that the Court two or three times told said Harvey, that the instruction must go to the jury and the said Harvey as many times stated that he had not got said instruction nor did he know where it was.

This affiant further says that he then asked said Harvey if he had destroyed said instruction and he replied that he had not. This affiant then asked said Harvey, if he had said instruction in his pocket and he solemnly affirmed he had not.

This affiant further says, that then the Court told the jury what the instruction contained and said to them that he had refused it and then the Court adjourned until the next Monday morning.

This affiant further says that after the adjournment of said Court on Saturday evening after said Cause was tried he was informed by one M. C. Cannon an Attorney of said Court that he had seen Rufus J. Harvey take said refused instruction from the Court's desk while this affiant was addressing the jury and saw said Harvey put the instruction in his pocket, and this affiant further states on the coming in of the Court on the following Monday, he told said Harvey

that this affiant could prove by said Hannen
that (he said Harbey) had said instructions in
his pocket on the Saturday previous,
when he the said Harbey said he did not
have it in his pocket but had torn it up.
And this affiant further says that at
trine of said trial it was then the
practice of said Court to deliver all
the instructions in a course to the jury
whether they were given or refused.

Subscribed and sworn to before me
May 8, 1863.
Shelton
C.D.

Armen Miller

State of Illinois,
Winnebago County, I William Brown of
said County being duly
sworn deposes and says that he is now
and has been for the last sixteen years a
practicing Attorney at Law residing
in the City of Rockford in the said
County of Winnebago. That at the Septem-
ber Term of the Winnebago County Circuit
Court A.D. 1859, he appeared Rufus H. Carey
an Attorney at Law then and still
residing in the said City of Rockford in
the trial of a cause in said Court
wherein Valentine A. Lake was plaintiff
and Martin Mc Coy was defendant,
that said cause was tried on Saturday
and this deponent aided said Carey
in the trial of said cause until the
evidence was closed, but did not remain
in Court to hear the arguments of
counsel in said cause. That the next
day Sunday, the said Carey saw this
deponent and told him he had succeeded
in said cause. And this deponent further
says that at the same time the said Carey
stated to this deponent that he then
was instructed in said cause and
hand over them to the Court to be signed,
that he afterwards stepped up to the

Judges Desk and took the instructions
and saw that one of them was marked
given and that the other was marked
refused. And this deponent further says
that the said Harey at the same time
stated to this deponent that he put the
instruction that was marked refused in
his pocket and thus withheld it from
the jury. And this deponent further says
that it was then the practice of the Court
to deliver all the instructions in a case to
the jury whether they were given or refused.
And further this deponent says that

Subscribed & sworn
to before me this 6th May
1863 O. Penneyer

William Brown

Clerk Circuit Court
Winnebago Co. Ill.

State of Illinois }
Winnipeg County } ss

M. C. Cannon of the County of
Winnipeg being first duly sworn deposes and
says that he is acquainted with Rufus J.
Harvey and has been acquainted with him
for the past three years.

This affiant further says that he was
present in the Winnipeg County Circuit Court
when the case of Valentine A. Loake vs ^{Martin} M^c.
Boy, ^{was tried} and on said trial, said Harvey was
attorney for the Defendant M^c Boy and Orrin
Miller was attorney for Valentine A. Loake.

This affiant further says that at the trial
of said cause this affiant saw the said Rufus
J. Harvey go up to the Judges Desk and take
one of the instructions off of said desk and
put it in his pocket (the said Harvey) pocket.

This affiant further says that at the time
of the taking of said instruction by said Harvey
Orrin Miller was addressing the jury, and
^{to back of this affiant's recollection} the Hon Benjamin R. Sheldon the judge of said
Court was walking in the Court house between
the Bar and the Door.

This affiant further says, after Orrin
Miller had closed his argument to the
jury, he heard the said Miller ask Rufus
J. Harvey for the instruction and he replied
that he had not got it, nor had he seen
it since he handed it to the Court for his
inspection.

This affiant further recollects that the
Court at the same time stated to said Harvey
that the instruction must go to the jury
and said Harvey replied that he had

not get it nor did he know where it was
The statement was made by said Harvey
two or three times

The word "murder" was tried

to the best of this affiant's
recollection, as entered before

M. B. Cannon

deputy:

Subscribed & sworn to before

me this 6th day of May

A.D. 1863

Oliver A. Penney

Clk of the Circuit

Court Winnebago County

Illinois:

State of Illinois
Winnebago County

Olive A. Burnap of said County
being duly sworn. Says that he is Clerk of the Cir-
cuit Court of said County, and has been for more
than two years past, and that on or about the 21st
day of February 1843 it being one of the days of
the February term of the Winnebago County Circuit
Court, an affidavit was subscribed and sworn
to before him and filed in his office by one David
Vangston in a cause then pending in said Court
wherein William B. Cook was Plaintiff and
Francis Burnap was Defendant, of which affida-
vit and filing the following is a true copy. -

William B. Cook
107
Francis Burnap
Winnebago Circuit Court
February Term 1843. -

State of Illinois
Winnebago County

David Vangston of said County
being duly sworn. Says that he has heard read the
affidavit of the Defendant in the above entitled
cause, wherein the said Defendant testifies that
he was informed by this affiant that this affiant
could testify to certain facts stated in the depo-
sition of one Ansbury taken in said cause
and this affiant says that he never informed
said Francis Burnap that he knew or could
testify to the contents of said deposition or to any
portion thereof. - That some time before the
last September Term of this Court said Bur-

"-nap inquired of this affiant if he remembered that
"Said deposition was read on a former trial of said
"cause. that this affiant informed him that he did
"recollect that said deposition was read on said
"trial but did not say or intimate to said Burnap
"that he this affiant had any recollection of the
"contents of said deposition; and he further says
"that said conversation was the only one ever had
"between this affiant and said Burnap in relation
"to said deposition and that this affiant had not
"then nor has he now any recollection of the contents
"of said deposition

David Vanston

"Subscribed & sworn before
"me this 21st day of July 1863.

O. A. Penoyer Clerk "

X

Endorsed. "Filed July 21. 1863

O. A. Penoyer Clerk "

and in a few moments after the filing of said affidavit Rufus J. Harney the law partner of Francis Burnap came to him and asked for the papers in said cause of William L. Cook vs Francis Burnap among which papers was the aforesaid affidavit of the said Vanston. This affiant let the said Harney have the said papers, and on account of there having been so much trouble over the loss of certain papers in said cause, that he resolved to know what became of the papers, if any were missing, and took a seat outside of the bar with a view of watching the papers while in the hands of the said Harney; and while sitting in that

place he saw the said Harrey do up the papers in
said cause except the affidavits of the said Vanston
which he slipped in his hat sitting near him: the
affiant was very soon after that and while sitting
in the same place called to go in to the Recorder's
Office and not wishing to leave the papers with
Mr Harrey, asked him for the papers in said cause
the said Harrey handed this affiant the said
papers except the said affidavits of said Vanston:
this affiant then told him the said Harrey he
wanted the affidavits of Vanston: the said Harrey
pretended that he had not got it, and did not know
where it was: this affiant told him he had it in
his hat, and he must give it up - Mr Harrey said
the said affidavits had nothing to do in the case
and should not be among the papers: This affi-
-ant told him that was nothing to him, if such was
the fact - Mr Harrey then insisted to this affiant
that the said affidavits had not been filed: this
affiant told the said Harrey that it had been filed
as he had filed it but a few moments before, and
that he must have the same to put with the papers
in said cause: whereupon the said Harrey deliv-
-ered the said affidavits of Vanston to this affiant
and the same was placed with said papers in
said cause

Oliver A. Penney.

Subscribed and sworn
this 6th day of May, A.D.

1863, before me,

William Hulin,

Clats County Court

Winnebago County, Minn.

¹⁸ People &c

110 - 203

R. J. Harvey

Application for rule
to show cause why
disbarment of R. J. -
Harvey should not
be stricken from
roll of Attorneys

Filed May 8. 1863
L. Leland
Clerk



The People

Statements under oath. —

Orin Miller atty at Law
 O. P. Mayor Clerk Circuit Court
 J. E. L. Southgate Dep. Clerk Circuit Court
 Rufus E. Bailey, Atty at Law,
 William S. Goodhue atty at Law
 J. A. Wight
 John F. Eccleston atty at Law
 James E. Manlove atty at Law, J. P.
 Porter Sheldon "
 W. L. Thrope
 E. H. Baker "

W. H. Emerson atty at Law
 John A. Davis
 William Brown
 H. W. Taylor
 M. B. Derrick
 Hiram R. Enoch County Treasurer
 J. C. Dennis Deputy Sheriff

Subscribed and sworn May 15, 1862,
 before me,

William Keeler,
 Clerk of the County
 Court of Winnebago
 Ill.



P.S. 19 3-203

The People's

Rufus J. Harvey

affd.

Filed May 19, 1863.

Shelton
Ch.