

No. **12127**

Supreme Court of Illinois

Spangler.

vs.

Jacoby.

Monday May the 2nd A.D. 1853

State of Illinois
McDonough County } ss.

Plas before the Honorable
O. C. Skinner Judge of the fifteenth Judicial
Circuit of the State of Illinois, at a Circuit
Court begun and held at the Court
House in Macomb on the first Monday
in the month of May in the Year of our
Lord One thousand Eight hundred and
fifty three

Present

Honorable O. C. Skinner Judge
C. A. Warren State Attorney
William H. Randolph Clerk
J. W. Hogan Sheriff.

And afterwards to wit on the first day
of the said Term of said Court came
out to be heard the cause wherein Andrew
Jacoby is plaintiff and Lewis S. Spang
is defendant action of debt. to wit

Andrew Jacoby }
vs } debt.
Lewis S. Spang }

And now on this
day came the defendant by his attorney
and moved the Court here to quash the
summons herein, and after hearing the
argument of Counsel it is considered
by the Court that said motion be
overruled; And the defendant being
three times solemnly called, came
not, but made default herein, Whereupon
it is considered by the Court that
the Plaintiff have and recover
of the defendant the sum of One
thousand and fifty five dollars his
debt in his declaration mentioned
together with his damages and as those

damages are unknown to the Court it is ordered that the Clerk assess the same and the Clerk having assessed the same at the sum of three dollars and Eighty Seven Cents which being exhibited to and approved by the Court it is therefore ordered by the Court that the said plaintiff have and recover of the said defendant his debt together with with his damages so assessed as aforesaid together with his costs by him in this behalf incurred and expended and that execution issue therefor. And now on this day when the said defendant by ~~his~~ Attorney and filed a bill of exceptions to the Opinion of the Court herein which is in words and figures as follows to wit

vs Andrew Jacoby }
Lewis S. Spangler } Debt

Be it remembered that on the calling of this cause the plaintiff moved the Court to quash the summons issued in this case for the following reasons viz

vs Andrew Jacoby }
Lewis S. Spangler } In Reply

The defendant moves the Court to quash the summons issued in said case for the following reasons viz - Because the said summons is made returnable to & the defendant was ordered therein to appear on the first Monday in May A. D. 1853 as the first day of the term of the McDonough Circuit Court to be holden in the County of

The Barrenge, which as insisted by defendants, by law in terms of said Court is authorized by law to be held in the month of May aforesaid but by last said Court is to be holden in a different month.

Copy of the Summons herein

State of Illinois
McDonough County } et. The People of the State of
Illinois To the Sheriff of said
County, Greeting.

We command you to
Summon Lewis S. Spangler if to be found
in your County, personally to be and ap-
pear before the Circuit Court in and for
the said County of McDonough on the first
day of the next term thereof, to be holden
at the Court House, in Macomb, on the first
Monday in the month of May to answer
unto Andrew Jacoby of a plea that he
render unto him the sum of One hundred
and fifty five dollars which to him he owes
and from him unjustly detains to his dam-
age the sum of fifty dollars as he says,
And have you then and then this
writ and make return thereon, in what
manner you execute the same.

Test

Witness William H. Randolph
Clerk of our said Circuit
Court at Macomb this 19th
day of April A.D. 1853

William H. Randolph
Clerk

Copy of the Sheriff's return thereon.

I have served the written by reading
the same to the written named Lewis
Spangler this 20th day of April

Oct 1853. S. H. Hogan Sheriff of McHenry
County.

The plaintiff and defendant
then submitted the motion to the Court
upon the following agreed case,
The plaintiff and defendant agree
to submit the decision of the Court
motion to the Court on the following
agreed case viz It is agreed that the
summons in the above case is as
stated in the grounds of the above
motion - It is agreed that prior to the
meeting of the last legislature of the State
of Illinois, the times fixed by law
for holding the terms of the McHen-
ry Circuit Court, were the third
Mondays in April & November,
that at the last session of the Illinois
Legislature, a Bill was introduced in
the Senate of said legislature in which
it was provided that McHenry
County should be added to the fifteenth
Judicial Circuit & be part thereof
said County having previously constituted
a part of the fifth Judicial Circuit
and that the times of holding the
terms of the Circuit Court in said
County should thereafter be on the
first Mondays in May & Septem-
ber & to be in force from its passage;
That said Bill having passed the
Senate was reported to the House of
Representatives where it was amended,
that said Bill was sent to the Senate
(without having been read the third
time or the yeas and nays called
so far as shown by the Journal of
the House of Representatives) for their
concurrence; and that the Senate
concurred in the amendment

and passed the Bill; that said Bill
was signed by the Speakers of the Senate
and House of Representatives & approved
by the Governor; All which facts
in relation to the proceedings on said
Bill appear and are shown by the
Journals of said Senate & House of
Representatives and a copy of said Bill
certified by the Secretary of State, under
the Seal of State, copies from which
marked A. & B. are referred to make
part hereof.

"Copy A"

Mr Sibley from the Committee on Banks
and Corporations to whom was referred a bill
to add McHenry County to the fifteenth
Judicial Circuit and fixing the time for
holding Courts in said County, &c reported
the same to the House with amendment
"Strike out the second section thereof" which
was concurred in by the House and the
Bill was ordered to be engrossed for a
third reading.

United States of America }
State of Illinois } ss

I Alexander Starnes
Secretary of State of the State of Illinois, do
hereby certify that the foregoing is a true
extract from the Journal of the House of
Representatives, and I further certify that
the Journal furnishes no evidence of
the final passage of the Bill
adding McHenry County
to the fifteenth Judicial Circuit.
In Testimony whereof I have
hereunto set my hand and
affixed the Seal of said State
at Springfield this 2nd day of
April A.D. 1853

Alexander Starnes
Secretary of State

"Copy B." (Senate Journal)
January 29, 1853

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Mr. Campbell introduced a bill for an Act
to add Mc Donough to the 15th Judicial Circuit
which was read and

Ordered to a second reading.

On Motion of Mr. Campbell

The rule was suspended, the bill read
a second time by its title and referred
to the Committee on Judiciary.

January 31.

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Mr. Judd from the Committee on Judiciary
to whom was referred a bill for an Act
to add Mc Donough to the 15th Judicial
Circuit & fixing the time for holding Courts
in said County, reported the same back
with an amendment, which was read
and concurred in. Ordered to be
engrossed to a third reading.

Jan'y 31.

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Mr. Campbell moved to reconsider taken
on ordering to be engrossed for a third
reading a bill for "An Act to add
Mc Donough County to the 15th Judicial
Circuit & fixing the time of holding
Courts in said County." which was
agreed to and On Motion of Mr. Camp-
bell, The Bill was referred to the Com-
mittee on Judiciary.

Jan'y 31

page 216

Mr. Judd from the Committee on the Judiciary
to whom had been referred a bill for "An Act
to add Mc Donough County to the fifteenth
Judicial Circuit & fix the time of holding
Courts in said County" reported the same back
with a substitute which was agreed to. Ordered
to be engrossed for a third reading
On Motion of Mr. Campbell - The rule was
suspended, the bill read a second time
by its title and the question then being

^a
"Shall the Bill pass" It was decided in the
affirmative - Yeas 22 - Nays 00 -
Those voting in the affirmative are
Messrs. Bryan, Campbell, Cook, Conder,
Davis, Dietrich, Gillespie, Graham, Ridley,
Jennings, Ladd, Morton, O'Keefe, O'Neal,
Palmer, Parker, Platt, Sneath, Talcott,
Wallace, Wood, & Wynn.
Ordered that the title of the bill be so
expressed and that the Secretary inform
the House of Representatives of the
passage thereof and ask their con-
currence therein. page 407

Feb 9

A message from the House of Represen-
tatives by Mr. Nixon a Member.

Mr. Speaker, I am directed to inform the
Senate that the House of Representatives
have concurred with them in the
passage of bills of the following titles
"An act to add Mc Donough County
to the 15th Judicial Circuit & fixing the
term of holding Courts in said County

Feb 10

A message from the House of Represen-
tatives by Mr. Sibley a member.

Mr. Speaker I am directed to inform the Senate
that the House of Representatives have
concurred with them in the passage
of a bill with the following title
viz - An act to add Mc Donough
County to the 15th Judicial Circuit
& fix the term of holding Courts in
said county with an amendment
in the passage of which amendment
I am instructed respectfully to ask
the concurrence of the Senate.

On motion of Mr. Campbell

The rule was suspended and a
Senate Bill for an act to add
Mc Donough to the 15th Judicial

Enrich & fix the time of holding Courts
in said District near taken up with
the House Amendments stands. The said
amendments were read and the ques-
tion being on concurring therein the
yeas and nays being demanded it
was decided in the affirmative
Yeas 19 Nays 00. Those voting in the
affirmative are Messrs. Bryan
Cunha, H. Strick, Gilchrist, Graham
Lindley, Ferguson, Judd, Key, Kendall
Morton, O'Neal, Ornelveney, Osgood
Plato, Reiffles, Sweet, Talcott, Wallace
& Tryon.

July 11.

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A message from his Excellency the
Governor by Mr. Ames his private
Secretary Mr. Speaker, I am di-
rected to inform the Senate that
His Excellency has approved &
signed bills of the following titles

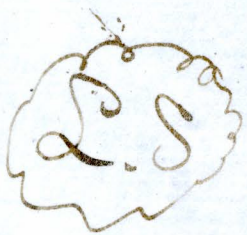
An act to add Mc Donough County
to the 15th Judicial Circuit & fixing the
time of holding Courts in said County

United States of America

State of Illinois, - - - ss.

I Alex^r. Stone
Secretary of State in and
for the State of Illinois do hereby - that
the within and foregoing is a correct
copy of the Journal of the Senate in
relation to the proceedings had on
the within named bill.

In testimony whereof I herunto set my hand
and the Seal of State at
Springfield this 27th day of
April A.D. 1853



Alexander Stone
Secy of State

Also the copy of said Bill with Certificate & Seal marked C. is made here-
unto.

Copy C.

No. 12

An act to Add McDonough County to the
fifteenth Judicial Circuit, and fixing
the times of holding Courts in said County.

§1 Be it enacted by the People of the State of
Illinois represented in the General
Assembly, That from and after the passage
of this act, the County of McDonough
shall constitute part of the fifteenth
judicial Circuit; and the times for holding
Courts in said County, on the first
Mondays in May and September in
each year.

§2 This act to take effect and be in
force from and after its passage.

John Reynolds
Speaker of the House of Reps
H. Koener
Speaker of the Senate

Approved Feb. 11. 1853

J. A. Matteson

United States of America
State of Illinois

§ ss. I Alexander Stans
Secretary of State of the State of Illinois,
do Certify, that the foregoing is a correct
Copy of an Enrolled Bill on file in
my office.

In testimony whereof I hereunto
set my hand and affix
the seal of said State at
Springfield this 16th day
of April February A.D.
1853

Alexander Stans
Secretary of State



Now it is agreed by the parties that
the said Copies from the Journals of
the Senate & House of Representatives
is full and complete & contains all
shown by said Journals And it is further
agreed that if the Court shall be of
Opinion, that said Bill became a
Law & is now in force, upon said facts
so stated and agreed, then said
Motion is to be overruled by the Court
But if the Court shall be of Opinion
that said Bill did not become a Law
or as much is not in force then said
Motion is to prevail & said writ is
to be granted. It is further agreed
that either party may appeal or
prosecute a writ of Error or apply
for a Supersedeas to the Supreme
Court from the decision of the
Circuit of McSherragh Circuit
Court, upon the above agreed case
& facts therein stated, in the same
manner as in other cases when
such proceedings are allowed.

It is further agreed by the parties
that an appeal or writ of Error may
be prosecuted in the above case to
the Supreme Court holding its session
at Ottawa next June, & that said
Court sitting in the Division in
which Ottawa is included shall
adjudicate & decide the same &
send down its decision to the
McSherragh Circuit Court in
the same manner as if the
same were taken & prosecuted
in said Court in the Division
in which Springfield is situated
& that this agreement be entered
of record in this case &

Copied into the record to be sent
up to said Supreme Court so
sitting at Ottawa, & it is agreed
that no appeal bond shall be
required.

May 2nd 185-3

(Signed)

J. P. M. Buchanan

Thos. E. Brannan

P. G.
R. D.

But the Court over-ruled the
motion, refused to grant said
summons & gave judgment
for plaintiff to which decision
& judgment of the Court over-ruled
said motion the defendant by
his Attorney excepts & prays
that this Bill of Exceptions may
be signed sealed & enrolled
which is done accordingly

(Signed) O. C. Skinner Secy
Judge

And afterwards to wit on the
day & year aforesaid it was
ordered by the Court that
Court do now adjourn until
Court in course.

(Signed)

O. C. Skinner
Judge -

State of Illinois } Set
McDonough County } McDonough Circuit Court.
May Term A.D. 1853 -

I William H. Randolph Clerk of the Circuit Court
within and for said County do hereby certify
that the foregoing contains a true and correct
copy of the proceedings had in this case to wit
Andrew Jacoby vs Lewis S. Spangler in action
of debt as appears from the Records and
papers on file in my Office

In testimony whereof I have hereunto
set my hand and affixed the seal
of said Circuit Court at my
Office at Macomb this 5th
day of May in the year of our
Lord one thousand eight hundred
and 53.

William H. Randolph Clerk
of McDonough Circuit Court

In Supreme Court June Term 1853,

And now comes the said appellant
by Blackwell his attorney and says that
in the record of the proceedings and
in the rendition of the judgment
aforesaid manifest error hath
intervened to his prejudice in this
to wit

1 The said Circuit erred in overruling
the appellants motion to quash the summons
aforesaid

2 In rendering judgment for
appellee when it should have
been rendered for appellant
Wherefore &c Blackwell p 9

Lewis S Spangler
23.
Andrew Jacoby

65

Record & Assgt. of mms.

Filed June 15th 1853

L. Leland Clk

By J. K. Liland Secy.

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Preface

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