

12079

No. _____

Supreme Court of Illinois

Clark, et al.

vs.

Whitbeck.

71641  7

²
No. ~~12079~~ ² Cook
Erastus S. Clark et al.
^{vs.}
Henry Whitbeck

2

1853

Refused

12079

United States of America }
State of Illinois }
County of Cook } Jf

Please before the Honorable Giles
Spring Judge of the Cook County Court
within and for the County of Cook and
State of Illinois aforesaid at a regular
term of said Court begun and holden
at the Court House in the City of Chicago
in said County and State on the first
Monday being the seventh day of May
in the year of our Lord One thousand
eight hundred and forty nine and of the
Independence of the United States the
seventy third

Present the Honorable Giles Spring Judge
Patrick J. Ballingall Prosecuting Attorney
Isaac Cook Sheriff
Attest James Curtis Clerk

"Be it Remembered that here-
tofore to wit on the Twentieth day of April
in the Year of our Lord One thousand
eight hundred and forty eight into the Cook
County Court came Erasmus S. Clark and
Edwin Edwards and file with the
Clerk of said Court an Appeal Bond apprened
by Henry S. Rucker a Justice of the Peace in and
for the said County of Cook which said Ap-
peal Bond is in the words and figures follow-
ing to wit

"Know all men by these presents That me Erasmus S. Clark Edwin
Edwards and C. M. Tracy of the County of Cook in the State of Illinois
are held and firmly bound unto Henry Witbeck in the penal sum

of Seventy dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators jointly severally & firmly by these presents witnessed our hands and seals this 29th day of March A.D. 1848. The condition of the above obligation is such that whereas the said Henry Witbeck did on the 9th day of March A.D. 1848 before Henry L. Rucker a Justice of the Peace for the said County of Cook receive a judgment against the above bounden Erastus L. Clark & Edwin Edwards for the sum of Thirty dollars damages besides costs of suit from which judgment the said Clark & Edwards have taken appeal to the Cook County Court of the County of Cook aforesaid and State of Illinois. Now if the said Clark & Edwards shall prosecute this 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 remain in full force and effect. Edwin Edwards *EB* & Wray *EB*
Approved by me at my office this 29 day of March 1848 H. L. Rucker
Justice of the Peace

And also upon the same day and year to wit on the twentieth day of April in the year of our Lord One thousand eight hundred and forty eight the said Defendants Erastus L. Clark and Edwin Edwards filed in the office of the Clerk of the Cook County Court aforesaid a transcript of the proceedings had in the said cause before the said Justice of the Peace which said transcript is in the words and figures following to wit

State of Illinois Cook County J. Before Henry L. Rucker Justice Peace. Henry Witbeck vs Erastus L. Clark & Edwin Edwards Affirmavit on note and account. Demand of \$100.00
Summons & a subpoena issued Feb'y 14th 1848 set at Feb'y 19th 1848 at 9 o'clock AM Lane Court Minor Rtd Served by reading to defendant Feb'y 15th 1848 Feb'y 19th 1848 Court by agreement of parties to Feb'y 26th 1848 at 9 o'clock AM Feb'y 26th 1848 parties in Court & after hearing evidence the cause is sent to Feb'y 28th at 10 o'clock AM. Feb'y 28th Court again to March 4th 1848 at 9 o'clock AM March 4th 1848 Court again to March 9th 1848 at 10 o'clock AM, March 9th 1848 Judgment is rendered for the plaintiff for the amount found to be due being damages \$20.00 Costs Judg-

And also accompanying said transcript and file
herewith men the following Note and account
which said Note and account are in the words
and figures following to wit

Chicago Feb 30th 1847

Fifteen days after date for value received
we promise to pay to W Whitbeck or bearer the sum
of Thirty six dollars and if paid when due to be
Thirty one dollars with interest

Clark & Edwards

Clark & Edwards to

Dr

W Whitbeck

Feb 19 th 1846	to Hays and 2 Staples	\$50.25
Aug 26	to Hays one day	75
	to one Lumber Wagon	65.00
		\$ 115.00

ment March 9th 1848. March 29th 1848 deft pay an appeal & bond
drawn 10. Justices fees docty 12 1/2 dimes 18 1/4 sfa 18 1/4 swg wit 16 1/4 contg 4
50 Indgt 25 Appeal 25 bond 50 Transct 25 -- 241 1/4. Withep Patricks Lana 50
Const Wigners service 25 do sfa 12 1/2 mileage 15

State of Illinois, Cook County f. I Henry S. Rucker a Justice of the
peace within & for said County do hereby certify that the above Trans-
cript and accompanying papers contain a full and true statement of the
proceedings had in & before me in the above entitled cause. Given un-
der my hand and seal this 29th day of March 1848. H S Rucker Just
peace 

And accompanying the said transcript and
filed therewith was the summons issued by the said Justice of the
peace in the said cause which said summons is in the words and
figures following to wit:

State of Illinois Cook County f. The People of
the State of Illinois to my Constable of said County Greeting. You are here-
by commanded to summon Crastus Clark & Edwin Edwards to ap-
pear before me at my office in Chicago, on the 19th day of February
inst at 9 o'clock AM. to answer the complaint of Henry Witbeck
for a failure to pay him a certain sum not exceeding one hundred dol-
lars and thereof make due return as the law directs. Given under
my hand and seal this 16th day of February A.D. 1848. H S Rucker
Justice of the peace 

Upon the back of which said summons
was the following endorsement to wit: "Henry Witbeck vs Clark &
Edwards. Summons. Demand \$100.00 Costs 30. And also upon the
back of the said summons was the return of Wigners Constable
of said County of Cook to said writ which said return is in the
words and figures following to wit-

February 15 1848. Served by reading to the writ
in named person. 2 services 50 2 miles 10 Wigners Const

And thereupon on the same day and year
to wit on the twentieth day of April in the year of our Lord One thou-
sand eight hundred and forty eight out of the office of the Clerk
of the said Cook County Court and under the seal of the said Court
was issued the process, writ of summons in the said cause which said

summons is in the words and figures following that is to say

State of Illinois Cook County for the People of the
State of Illinois to the Sheriff of said County. Greeting. We command you
that you summon Henry Whitbeck if he shall be found in your county
personally to be and appear before the Cook County Court of said County
on the first day of the next term thereof to be holden at the Court House
in the City of Chicago in the said County on the first Monday of
May next to answer unto Crastus S. Clark & Edwin Edwards
in an appeal from a judgment of H. Rucker Esq a justice of the peace
&c And have you then and there this writ with an endorsement there-
on in what manner you shall have executed the same. Witness the
Honorable Hugh J. Lickey Judge of our said Court and the seal thereof at the
City of Chicago in said County this 20th day of April A.D. 1848 James
Curtis Clerk 

Upon the back of which said summons
is the Return of the Sheriff of the said County of Cook of the execution
of the said writ which said return is in the words and figures fol-
lowing to wit

Executed by reading the within in the presence
of the within named Henry Whitbeck April 21 1848 1 cer 50 1 mile 06 1/4 Ro-
turn 12 1/2 \$ 68 3/4. d Cooks Shiff by John Beach Lefty

And afterwards to wit on the ninth
day of May being one of the days of the May term of the Cook County
Court in the year aforesaid before the said Court then sitting the fol-
lowing among other proceedings were had to wit

Henry Whitbeck vs Crastus S. Clark &
Edwin Edwards Appeal. This day came the said defendants by Tracy
their Attorney and enter their motion to continue this cause to the
next term of this court

And afterwards to wit on the tenth day of
May in the year of our Lord one thousand eight hundred and forty
eight being one of the days of the May Term of the Cook County Court
in the year aforesaid before the said Court then sitting came the
said Edwin Edwards one of the defendants in the above cause and
subscribed and filed an affidavit herein which said affidavit is
in the words and figures following to wit

In the Cook County Court of the May Term Address
Henry Whitbeck vs Edwin Edwards & Crastus L. Clark. Edwin Edwards
one of the defendants in the above entitled cause being duly sworn doth
depose and say that Francis Justice is a material witness for said de-
fendants to have on the trial of said cause inasmuch as said de-
fendant believes that said Francis Justice will state and that said
defendants can prove by said witness that the said Henry Whitbeck is
indebted to said defendants in a sum of money exceeding the amount
of said plaintiffs demand against them herein for goods and mer-
chandise sold and delivered to said plaintiff and by his orders and
requests and that said affiant knows of no other competent witness
by whom said defendants can show said fact and establish the
amount of their just set off herein. And said affiant further
deposes and says that said Francis Justice is and since the com-
mencement of this suit has been absent and beyond the reach of
the process of subpoena of this Court and beyond the reach of said
defendants so that they could not and cannot obtain the attend-
ance of said witness at this term of said Court That said Fran-
cis Justice as said affiant is informed and believes has depart-
ed to Mexico as a regularly enlisted volunteer soldier in the service of
the United States in the prosecution of the war of invasion by the
United States upon Mexico and has never returned And that as said
affiant is informed and believes the said witness is about to return
to the United States and said affiant deposes and says that he is
informed and believes that the attendance of said witness can be pro-
cured at the next term of this Court. Edwin Edwards. Sworn be-
fore me this 10th day of May Address J. Curtis Clerk

And afterwards to wit on the ninth day
of October in the year of our Lord One thousand eight hundred and
forty eight before the Cook County Court then sitting the following
among other proceedings were had that is to say

Henry Whitbeck vs Crastus L. Clark & Ed-
win Edwards Appeal. And now came the parties by their coun-
sel and the said ^{defendant} ~~plaintiff~~ moves to dismiss this cause for
want of jurisdiction in the Court below. And after argument had
the Court being fully advised do overrule the same

And afterwards to wit on the Twelfth day of May in the year of our Lord One thousand eight hundred and forty nine being one of the days of the May term of the Cook County Court in the year aforesaid before the said Court then sitting the following among other proceedings were had to wit

Henry Whitbeck vs Erastus L. Clark & Edwin Edwards Appeal. This day came the said parties by their Attornies and issue being joined herein by agreement this cause is submitted to the Court for trial without the intervention of a jury and the Court after hearing the evidence adduced and argument of Counsel and being now fully advised in the premises finds the issue for the plaintiff and awards his damages to the sum of Seventy five dollars Therefore it is considered that the said plaintiff do recover of the said defendants his damages of Seventy five dollars in form aforesaid awarded together with his costs and charges by him in this behalf expended and have execution therefor

State of Illinois }
County of Cook } Jf

J. Walter Kimball Clerk of the Cook County Court in and for the County and State aforesaid do hereby certify that the foregoing is a full true and perfect transcript of the records and papers in a certain cause wherein Henry Whitbeck was plaintiff and Erastus Clark and Edwin Edwards defendants as appears from the original records and papers now in my office

In testimony whereof I have hereunto set my hand and affixed the seal of said Court at the City of Chicago this 8th day of June
A.D. 1849

Walter Kimball Clk

36.
Co. W. County Court

Henry Whitbeck

vs
Erastus L. Clark &
Edward Edwards

Transcript

W. Whitbeck

vs
Erastus L. Clark &
Edward Edwards

Filed June 13. 1849.
J. H. Clark Clk.

Fine of 4.75 Recd. for
in full of W. H. Clark & Co.

Clark et al
^{vs}
Whitcomb 3

The Amount claimed by pliff.
before the Justice appears by
indorsments on the summons.
as required by Statute.

The Amount of note & acf. does
not limit the sum constituted the
pliffs. Claim -

The finding of the Court on the
evidence produced, shows
that the amount due was
less than \$100 -

I see nothing to make an ar-
gument about in this case

Wm Goodrich
Counsel for deft. in
error

Clarks & Edwards

210

W. H. Edwards

Check the 25 } Error to Cook
in
Hutchinson

And now the main
plaintiff to move by E. M. Gray that
the said Cook County Court
Enter an order on the said
motion to dismiss.

Wherefore there is leave to the
said plaintiff ^{move} ~~and~~ ^{pro-}
ceedings. by E. M. Gray first
petitioner.

And the said left. Com
joins in such a way as to
keep the do not exist a very obvious of the left.

H. Goodrich
lefted?

State of Illinois, }
Supreme Court, } ss.

SCIRE FACIAS.—FREE TRADER OFFICE, OTTAWA.

The People of the State of Illinois
TO THE SHERIFF OF Cook County.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the ~~circuit court of~~ Cook County Court of Cook county, before the Judge thereof, between Henry Whitbeck plaintiff and Erastus L. Clark & Edwin Edwards

defendants it is said that manifest error hath intervened to the injury of the said Defendants

as we are informed by this complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said Henry Whitbeck

that he be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the 22nd Monday in June next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Henry Whitbeck notice, together with this writ.

WITNESS, the Hon. Samuel H. Trench
Chief Justice of our said Court, and the seal thereof,
at Ottawa, this 22nd day of May
in the year of our Lord, one thousand eight hundred
and forty

T. Leland

Clerk of the Supreme Court.



1856/11
Clark & Edwards
Henry Whitbeck

Sci. Ia.

To Cook County

June 2nd. 1850.

Returned, the within named
Henry Whitbeck is absent
from the County, somewhere
on the Wabash --

Chicago May 24. 1850

Ret. 10th.

J. Cook Shiff
By John C. Miller
[Signature]

TO THE SHERIFF OF
Cook County,
State of Illinois,
The People of the State of Illinois

County.

Because in the record and proceedings, and also in the rendition of

WITNESS, the Hon.

Chief Justice of the said Court, and the seal thereof,

Clerk of the said Court.

State of Illinois, Oct.

The people of the State of Illinois,

To the Clerk of the ~~Circuit~~ ^{Cook County} Court for the county of Cook—Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the ~~Circuit~~ ^{Cook County} Court of Cook county, before the Judge thereof, between Henry Whitbeck

Edwin Edwards plaintiff and Erastus L. Clark &

defendant, it is said manifest error hath intervened to the injury of the aforesaid Clark & Edwards as we are informed by their complaint, and we being willing that error, if any there be, should be corrected 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 plaintiff 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 Second Monday of June A.D. 1880—~~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. Samuel A.
Just Chief Justice of our said Court, and the
seal thereof at Ottawa, this 13th day of
June in the year of our Lord
one thousand eight hundred and forty-nine.

Shelton

Clerk of the Supreme Court.

Clark & Edwards
 as
Henry Whitbeck
 vs
 Wm of Enow

Filed June 13. 1849.
 Ireland Clk.

Clerk of the Supreme Court.

STATE OF ILLINOIS, }
Supreme Court.

The People of the State of Illinois,

To the Sheriff of the County of *Cook* Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the ~~Cook County Court of Common Pleas~~ *Cook County Court of* ~~of Cook~~ county, before the Judge thereof, between *Henry Whitbeck* plaintiff and *Erastus S. Clark & Edwin Edwards*

defendant; it is said that manifest error hath intervened, to the injury of the said defendants

as we are informed by *their* complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Henry Whitbeck*

that *he* be and appear before the justices of our said supreme court, at the next term of said court, to be holden at Ottawa, in said state, on the *second* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *he* shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Henry Whitbeck* notice, together with this writ.

Witness, the Hon. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *25th* day of *October* in the year of our Lord one thousand eight hundred and fifty *two*.

S. Leland

Clerk of the Supreme Court.

By *P. W. Leland* Depty. Clk.

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Eractus v. Black Hal.
Henry Whitteck.
Alias Sci. fa.

Arrival by passenger to
to the within named
Henry Whitteck then
April 19th 1853

1 Arrives	50
1 Mile	5-
1 Returns	10
	65

to P Broadly Shrub
by J. A. Norton Sept

Filed May 12. 1853.
L. Leland Clerk.