

No. 2854

Supreme Court of Illinois

McKnight, Admr.

vs.

James Semple.

I was at a Circuit Court continued and held at Springfield in and for the County of Sangamon State of Illinois on the day of November A.D. 1844 before the Honorable Samuel H. Treat one of the associate Justices of the Supreme Court of the State of Illinois and presiding Judge of the Eighth Judicial Circuit of said State & of the Circuit Court for said County of Sangamon.

Whereas heretofore to wit, on the 18th day of September A.D. 1844 there was issued from the Clerk's office of the Circuit Court for Sangamon County & State of Illinois a writ of Seire facias in the words and figures following to wit:

State of Illinois
Sangamon County } The People of the State
of Illinois, To the Sheriff of Madison County
Greeting.

Whereas heretofore to wit, on the 19th day of October A.D. 1840 there were filed in the Clerk's office of the Circuit Court for Sangamon County a declaration, Bond for Costs Copy of Notes and precise in the words and figures following to wit:

State of Illinois, Sangamon Circuit Court.
November Term 1840.

Sangamon County ss.

Thomas McKnight who is administrator of all and singular the Goods and Chattels right and Credit which were of

John McKnight deceased and who brings into Court here his letters of Administration by executor and Krum his attorney, Complains of Harpif Prickett of a plea that the said defendant render unto the said Thomas Administrator aforesaid the sum of Seven hundred thirty six dollars (\$736.75) Seventy five Cents which to the plaintiff as administrator the defendant justly owes & from him as such unjustly detains, For that at the County of Madison, Wm't, at the County and Circuit aforesaid the said defendant together with one James Temple on the ninth day of November 1833. then and there made their certain writing obligatory under their hands and sealed with their seals, and now here to the Court shown the date where of is the day and year last aforesaid, bound themselves or either of them twelve months after date of said writing obligatory to pay to the said plff as administrator of John McKnight aforesaid the sum of five hundred and fifty nine dollars, fifty Cents, which said writing was executed in consideration that the said Administrator had before that time sold as such the undivided half of the following tracts of land to Wm't: The North East of Sec. 28. 160 acres at \$2.02, pr acre North West q. of Sec. 28. 158 $\frac{1}{2}$ acres at 2.20 pr acre and the North East q. of Sec 32. 89 $\frac{1}{2}$ acres at \$5.00 pr acre all in Town three North Range 9 West, And for that at the County of Madison, Wm't, at the County and Circuit Aforesaid the said defendant together with one James Temple in certain other writing obligatory under their hands and sealed with their seals, and now to the Court here shown

and dated the said ninth day of November 1833.
+ which the said plff now brings into Court
here whereby the said David Prickett and
James Semple obligated themselves or either
of them to pay to the Plaintiff as administrator
of John McKnight deceased twelve months
after date of said writing obligatory the sum
of one hundred and twenty seven dollars
twenty five Cents for the Consideration of the
Sale by the said administrator + the purchase
by the said defendants or one of them of the
following tract of land to wit: The undi-
vided half of the North fractional half of
Sec. 33. Town 3 North Range 9 West being
300 acres at one dollar per acre also west
fractional half of Sec. 6 Town 2 N.R. 9
West 109 acres at 50 Cts per acre

And the plff says that neither the said
David Prickett the defendant nor the said
James Semple have paid any or all of the
aforesaid sum.

And for that at the County and Circuit
aforesaid the said David Prickett together
with one James Semple on the ninth day
of November 1833. Made their other Certain
writing obligatory under their hands seals
with their seals and being dated the
day and year last aforesaid + which
are now here to the Court shown whereby
the said defendant + James Semple obliga-
ted themselves jointly or severally to pay to the
Plaintiff as administrator of John McKnight
the sum of five hundred and fifty nine dol-
lars fifty Cents twelve months after date of

said writing - which said writing obligatory was made upon the Consideration that the said Plaintiff Administrator aforesaid had sold and the defendants or one of them had purchased the lands therein described and it was provided therein that if a Claim to lands by John Brady by bond from John McKnight should encroach on or take part of the lands therein mentioned then the said Brickett & Sample should have a pro rata deduction from the sum last aforesaid - and the said plaintiff avers that the said Claim of John Brady did not encroach upon or take part of said lands.

And for that at the County and Circuit aforesaid the said defendant together with James Sample made their Certain other writing obligatory under their hands and sealed with their seals & now here to the Court shown the date whereof is the 9th day of November 1833. whereby the said David Brickett and James Sample obligated themselves that they would jointly or severally pay to the plaintiff as administrator aforesaid, twelve months after ~~the~~ from date last aforesaid the sum of one hundred Seventy Seven dollars twenty five Cents in Consideration that the plaintiff as Adm of John McKnight had sold and the defendants or either of them had purchased the lands therein mentioned And it was provided therein that if a certain Claim by bond to lands of John Brady should encroach upon or take part of the lands therein mentioned then there should be a

deduction from the amount of said last mentioned writing obligatory a deduction pro rata and the said plff alleges that that the said Claim did not encroach upon or take part of said land. Nevertheless, the said defendant nor the said James Temple did not nor did either of them pay any or either all the aforesaid sums according to the tenor and effect of the said writing obligatory to the said plff. the often requested and demanded to the damage of the plaintiff as administrator three hundred fifty dollars, whereby an action hath accrued to him as Adm^r. aforesaid to have his debt and damages for the detention of that debt. Therefore sues,
Crowley & Krum
for plff.

Copy of Writings Sued upon
in all the Courts above

" Twelve months after date we or either of us promise to pay to Thomas McKnight Adm^r of John McKnight Dec^d. the sum of five hundred and fifty nine dollars and 50 Cts. The Consideration of the purchase of the undivided half of the following lands to wit. The N.E. 28. 160 acres at \$2.02 pr acre. NW. 28. 158. $\frac{66}{100}$ acres at 2.20^{cts} pr acre and the N.E. 32. 89. $\frac{66}{100}$ at \$5.00 pr acre all in Town three North. Range 9 West and if a Claim of John Brady who has a bond from John McKnight for 160 acres should encroach on or take part of the above lands then there is to be a pro rata deduction from the above sum

Witness our hands and

Seals, this 9th day of November 1833.

\$559.50.

David Prickett Seal
James Sample Seal

Twelve months after date we or either
of us promise to pay to Manner McKnight
Admr of John McKnight deceased the sum
of one hundred and twenty seven dollars
and twenty five Cents being the Consideration
of the purchase of the undivided half of
the North fr half of 33. Town 3. North N. G.
West 300 acres at \$100 pr acre. And the West
fr half of Six Town 2. N. G. West 109 acres
at 50 Cents pr acre And if the Claim of John
Prady who has a bond from John McKnight
should encroach on or take any part of
the above lands then there is to be a
pro rata deduction from the above sum
witness our hands and seals this 9th day of
Nov. 1833.

\$177.25

James Sample Seal
David Prickett Seal

Thomas McKnight
Admr.

In Debt.

David Prickett vs Sanguon Circuit
Court Nov Term 1840.

Whereby enter ourselves Security
for Costs in this Cause and acknowledge our
selves bound to pay or cause to be paid all
Costs that may accrue in this action either
to the opposite party or to any of the officers of
this Court in pursuance of the laws of this
State.

Clowds. & Hum

Oct 13. 1840. Alton.

And afterwards to wit: on the 19th day of October AD 1840. there was issued from the Clerk's Office of the Circuit Court for said County of Sangamon a summons in the words and figures following to wit:

The People of the State of Illinois
To the Sheriff of Sangamon County. Greeting

You are hereby Commanded to Summon David Prickett to be and appear before the Circuit Court of Sangamon County on the first day of next term to be holden at Springfield on the second Monday in the month of November next to answer to Thomas W. McKnight Administrator of John McKnight deceased in an action of debt. Debt seven hundred and thirty ~~four~~^{six} dollars seventy five Cents, Damages Three hundred fifty dollars. And have you then and there this writ.

Deal

Witness William Butler Clerk
of our said Court at Springfield
this 19th day of October AD 1840.
William Butler Clerk.

Which said writ was afterwards returned with an endorsement thereon by the Sheriff in the words and figures following to wit:

Executed on David Prickett by reading, October 20th 1840.

Wm J. Elkin Sheriff S.C.

And afterwards to wit: on the 18th day of November at the November Term AD 1840 of the Circuit Court for Sangamon County before the Honorable Samuel H. Treat Judge thereof,

An order was entered of record in the words following to wit:

Thomas McKnight Adm Plaintiff
Against David Prickett Defendant. In Debt.

On Motion of the Plaintiff a rule is granted him requiring the defendant to plead by two o'clock in the afternoon.

And afterwards to wit: on the 21st day of November at the November Term A.D. 1840. of the Circuit Court aforesaid an order was entered of record in the words following to wit:

Thomas McKnight Administrator
of John M^o Knight dec^d. Plaintiff
Against David Prickett Defendant. In Debt.

This day Came the defendant and swore to and filed his affidavit and moved the Court for a Continuance of this Cause which is granted at the defendant's Cost. It is therefore Considered by the Court that the plaintiff recover of the defendant his Costs at this term expended, and it is further ordered that he have execution therefor,

Which said affidavit is in the words and figures following to wit:

State of Illinois November Term of the
Sangamon County Circuit Court 1840.
David B Hill Admr. Plaintiff
Against David Prickett Defendant. In Debt.

Thomas McKnight Admr. re. *J. H. Hebb.*
against
The same,

David Prickett the defendant
in the above exhibited two Causes being duly sworn
says that he cannot safely proceed to trial
in said Causes at the present term of the Court
without the benefit of testimony which it
has not been in his power to obtain since
the Commencement of said Causes. His de-
ponent states that the notes upon which
said suits are brought, were given as stated
in said notes and plaintiffs declarations and
that said purchase was made jointly by
one James Semple and deponent and
said notes executed by both deponent.
States that before the purchase of the lands
for which said notes were given deponent
and said Semple examined said lands and
also the Claim of ~~John~~ Brady mentioned
in said notes and for which said Brady
had a bond from John McKnight of
whom one of the plaintiffs, Thomas Mc-
Knight is the Administrator deponent
states a short time after the purchase was
made by said Semple & himself of the lands
for which said notes were given deponent
sold & conveyed all his interest in the
lands to said Semple & said Semple be-
came liable to pay the whole amount
of said notes to said Hill & McKnight
deponent after the sale of his interest
to said Semple as aforesaid gave him-
self no more trouble about the matter

And is not so well informed Concerning it as he would have been in Case he had not sold as aforesaid, Deponent would further state that at the time the said Semple & himself examined the lands for which said notes were given before the sale as aforesaid & the Claim of John Brady they were both of ^{the} Opinion that the Claim of said Brady which they purchased before the said notes were given would encroach upon or take part of the lands bought of the said Hill & McKnight Adm^r as aforesaid, And this deponent verily believes it does take a part of said lands, - Deponent was informed some years since but by whom he does not now recollect that the said Claim of the said John Brady did take a part of said lands for which said notes were given.

This Deponent believes that the said Semple is not now in the United States nor has been for some months - that deponent supposed the said notes were paid until within a few months past and some time after the said Semple left this Country. That this deponent was only served with process on the 20th of last month & that since the service of process sufficient time has not elapsed to enable deponent to obtain the necessary information & testimony said Semple has in his hands the papers relating to the Cause and the information in relation to said Claims, for the foregoing reasons he cannot safely plead at the present term nor go to trial, he expects said Semple to return before the next term of the Court and believes he can by that time obtain the testimony

He makes this application not for delay,
but to obtain a fair trial
Sworn to before me David Prickett
this 18th day of Nov^r 1840.

William Butler Clerk.

And afterwards to wit: on the 24th day of March
at the March Term AD 1841. of the Circuit Court
aforesaid, an order was entered of record in the
words following to wit:

Thomas McKnight Plaintiff } In Debt.
against. }

David Prickett Defendant. }

By Consent of parties this
Cause is Continued until next term of this
Court.

And afterwards to wit on the 28th day
of July at the July Term AD 1841. of the Circuit
Court aforesaid, an order was entered of re-
cord in the words following to wit:

Thomas McKnight, Administrator
of the estate of John McKnight dec^d } In Debt.
against. }

David Prickett }

This day came the plaintiff
by his attorney And it appearing to the satisfaction
of the Court, that the defendant has been regularly
served with process And he being three times solenn-
ly called came not but made default, It is
therefore Considered and adjudged by the
Court that the plaintiff recover of and from
the said defendant the sum of seven hun-
dred and thirty six dollars and seventy
five cents the debt in the declaration

mentioned and damages for the detention of the same but because those damages are unknown to the Court. It is ordered that the Clerk make an asessment. And he having assessed the same to the sum of three hundred & thirty eight dollars and ninety Cents. And made his report thereof in writing which is approved of by the Court and ordered to be filed. It is therefore Considered and adjudged by the Court that the plaintiff recover of and from the said defendant the sum of ten hundred and & Seventy five dollars & sixty five Cents, the debt and damages aforesaid in manner and form aforesaid assessed and also his Costs herein expended and that he have execution therefor.

And afterwards to wit: on the 6th day of August. at the July Term AD 1841. of the Circuit Court aforesaid an order was entered of record in the words following to wit:

Thomas McKnight Admr.

against
David Crickett

vs. In Debt.

And now at this day Came the defendant by Stephen T. Logan his atty and enters his motion that a new trial be granted him in this Cause.

And afterwards to wit: on the 7th day of August AD 1841. there was filed in said Circuit Court an affidavit with the exhibits therein mentioned in the words and figures following: to wit:

State of Illinois In the Circuit Court of Sangamon
Sangamon County ss. County of the term of July AD 1841

David B. Hill Adm^r of
Thomas Brady dec^d
Against
David Prickett.
In Debt.

Thomas McKnight Adm^r
of the McKnight dec^d
Against
David Prickett.
In Debt.

David Prickett the defendant,
in the above entitled Causes, being duly sworn upon
his oath says, that he has, as he believes, a good &
meritorious defence to make in the above enti-
tled Causes, but has been induced to neglect to
prepare or make such defence at this present
term of this Court by reason of the assurances of
Mr D. B. Hill the Plaintiff in one of the said Suits
& who has the management & Control also of the
other one of said Suits as contained in the letters
of said Hill to said affiant herewith filed marked
A & B. and also of the assurances of Messrs Crooks
& Krum Attorneys of the said Plaintiff, contained
in their letter to this affiant herewith filed marked
C. From these assurances this affiant states
that he was induced to believe that these Causes
were to stand Continued from time to time
until efforts should be made to effect a
Collection of the Amount due in these Causes
by foreclosure of the Mortgages given to secure
the payment of the Notes on which these Suits

are brought, and sale of the mortgaged premises
and that he has been surprised by the rendition
of judgement against him at the present term
This affiant for the purpose of exhibiting
the character of this defence refers to his affi-
davit filed in these Causes on the 18th Nov. 1840. and
make the same a part of this affidavit.
except so far as it relates to the want of time
to prepare his defence and the probable re-
turn of James Sample Esq to this State. This
affiant distinctly states that he expects he shall
be able to prove that the consideration for
which the notes were given has partially
failed in this that the title to part of the land
purchased by this affiant and for the purchase
money of which said notes were given is defective
and wholly imperfect, but to what extent said
title has failed, only whom he can make the
proper proof on reference thereto, this affiant
states he can only be fully advised by consultation
with the said James Sample and by examination
of certain papers, which this affiant supposes
are in the possession of the said Sample or in
Madison County And this affiant further
states that he has not written to said Sample
on the subject. because he did not know where
to address him and has been as he now is in
daily expectation of the return of said Sample to
the United States & this State his former place
of residence And because moreover from the
assurances of the aforeaid David B. Hill
Messrs Cowles & Arum respectively hereinbefore
referred to he was induced to desist from
making this or any other attempt to procure

the proper proof on this subject.

This affiant states that if the default taken in these Causes at the present term be set aside & said Causes Continued he believes that he can prepare and make good his defence therein at the next term of the Court by procuring from the County Madison in which County the lands purchased as aforesaid lie, and more especially if in the mean time the said James Simple should return as this affiant confidently believes he will to this State.

Subscribed and sworn to David Prickett
before me this 7th day of
Aug. 1841. M. Eastham Ck.
per J. H. Matheny Ab.

Exhibit A. referred to in the foregoing affidavit.
St Louis Aug 13th 1841.

David Prickett Esq.

Mr Sir. Yours of the 24th Oct
fell into my hands to day for the first time, being
absent when it was received. I neglected to
examine all the letters which came to hand
during that absence until now. I am sorry to
trouble with a suit for the money which James
Simple and yourself owe me as administra-
tor of the Estate of Thomas Brady believing
that you sold your interest in the lands pur-
chased jointly by you and him perhaps for
but a trifling advance on first Cost. But it
cannot be denied that I have been badly
treated in this matter. Mr Simple has sold
the land and I presume pocketed the proceeds
and as I further presume without an intention

of paying for the land if by false swearing he can
get rid of it, And whether he will ever be here
to be sued again is the question. I am sorry
to trouble you but duty to the estate of Brady
and myself requires as you are aware that
I should do all in my power to recover the
money. I was not aware you were sued
or if informed by Mr Cowles I have for-
gotten it. Now Sir as you are a lawyer
and know how matters ~~after lost~~ in this respect
should be conducted together with the laws
applicable to the case if there is any other
course which I can pursue to get the money
I will pursue it and relax in my pursuit against
you until such course as you may suggest
shall be carried through provided my attorney
shall consider it certain that by that course I
will be able to recover and get the money
either by foreclosure of mortgage attachment
of Seamples property or any other mode you may
suggest. please write soon.
Yours truly, D. B. Hill

Exhibit (B) referred to in the foregoing affidavit.
St Louis Feby 4th 1841.

David Prickett Esq. Sir Since my letter to
you I have written to Mr Cowles on the subject
and meantime sent to Belleville for Copies of my
reports, I find in ~~my~~ the report of the sales
of the lands in Madison Notice of the mort-
gages and the Certificate of record in the office
at Edwardsville. so there is no doubt of
the existence of the mortgages, Mr Cowles

states that there is no difficulty as to recovery on the mortgages. but seems to have no recollection of the existence of them. I informed Mr Coles in mine of 31st Aug of the existence of these mortgages and requested suit to be brought on them provided the suit against you (can be (with your consent or otherwise) suspended until the termination of the Mortgage Cases without losing my recourse on you. This suspension will give you time during which simply may return and pending a suit of foreclosure brought may pay the money. Should he not do so. (which I deem still more likely) I have instructed Mr Coles to push these Mortgage Cases through with as little delay as possible and have requested that he employ Mr Keeling as an assistant. During which time I have requested that he and you so arrange the suit against you as that it be still until these Mortgage suits are determined. I do not wish to harass you believing you have had more of the benefits arising from the sale but in the last extremity I prefer the payment of the money by you to the alternative of paying it myself.

yours truly A. B. Will,

Exhibit (C) referred to in the foregoing affidavit.
Albion March 8th 1841.
A. B. Will Enquire.

Your favor of the 4th inst came to hand on the 7th past. In reply we state if we find those debts secured by mortgage as seems to be the understanding we shall

find no difficulty in acceding to your
suggestions, we will take immediate steps
to obtain the mortgages & proceed upon them
and while doing so let the Cases stand over
If you do not hear from us again
before you term you may consider us
as agreeing to a continuance of the Cases,
Yours Truly
Charles Krum

And afterwards to wit: on the 9th day of August
of the July Term A.D. 1841. of the Circuit Court
aforesaid an order was entered of record in
the words following to wit:
Thomas McKnight Adm. Plff. }
Against } Debt.
Said Prickett debt.

And now the Court being
sufficiently advised of and concerning the motion
entered herein to set aside the default vacate the
judgment rendered in this Cause, doth order
and decree that the motion be sustained and
that the default be set aside and that the
jagt. be vacated at the Cost of the defendant.
It is therefore ordered and decreed by the Court
that the said Plff. recover of and from the said
debt. his Costs by him herein at this term
expended, and that he have execution therefor
And it is further ordered that this Cause be
Continued.

And afterwards to wit: on the day of
November, at the November Term A.D. 1841. of the
Circuit Court aforesaid there was filed in
open Court a plea in the words and figures

following to wit:

State of Illinois } In the Circuit Court of
Sangamon County. } said County. Nov Term AD 1841.

David Prickett

ads.

Thomas McKnight Admr.

And the said defendant. Comes by his
attorneys and defends the wrong and injury where re.
and saith the said several Counts in said plaintiffs
declaration mentioned AChis non, because he saith
that neither of the said writings obligatory in the
said plaintiffs declaration mentioned is his
act or deed & of this he puts himself upon
the Country &c, Logan & Lincoln,

And afterwards to wit on the 29th day of
November, at the November Term AD 1841, of
the Circuit Court aforesaid an order was entered
of record in the words following to wit:

Thomas McKnight Admr. Plaintiff }
Against. } Debt.
David Prickett Defendant. }

By Consent of parties this
Cause was Continued,

And afterwards to wit. on the 1st day of
April at the March Term AD 1842, of the Circuit
Court aforesaid an order was entered of record
in the words following to wit.

Thomas McKnight Admr. Plaintiff }
Against. } In Debt
David Prickett Defendant. }

This Cause is Continued by Consent.

And afterwards, to wit. on the 25th day of July, at the July Term AD 1842 of the Circuit Court aforesaid an order was entered of record in the words following to wit:

Thomas McKnight Plaintiff

against

David Prickett Defendant.

Ordered that this Cause be Continued,

And afterwards to wit, on the 21st day of November at the November Term AD 1842 of the Circuit Court aforesaid an order was entered of record in the words following to wit:

Thomas McKnight Same Plaintiff

against

David Prickett Defendant.

In Pleb.

Ordered that this Cause be Continued,

And afterwards to wit on the 28th day of March at the March Term AD 1843 of the Circuit Court aforesaid an order was entered of record in the words following to wit:

Thomas McKnight Same Plaintiff

against

David Prickett Defendant

In Pleb.

Ordered that this Cause be Continued,

And afterwards, to wit, on the 13th day of November at the November Term AD 1843. of the Circuit Court aforesaid an order was entered of record in the words following to wit:

Thomas McKnight Admr. Plaintiff }
against }
David Pickett defendant. } Abt.
On Motion of the plaintiffs
attorney this Cause is Continued,

And afterwards to wit: on the 30th day of
March A.D. 1844 there were filed in the Clerk's
Office aforesaid two notes in the words and
figures following, to wit: Twelve months after date
we or either of us promise to pay to Thomas M^e
Knight Admr. of John M. Knight dec^d: the sum
of One hundred and Seventy Seven dollars and
Twenty five Cents, being the Consideration of the
purchase of an undivided half of the North
fr half of 33. Down 3. North of West. 300 acres at
\$1.00 per acre and the West fr half of Six Down
2 N. of West. 109 acres at 50 Cts. per acre and
if the Claim of John Brady who has a bond
from John McKnight should encroach on or
take any part of the above lands then there is
to be a pro rata deduction from the above
sum. Witness our hands and seals this 9th day
of Nov. 1833.

James Leupke Seal
David Pickett Seal

\$177. 25
attest

Twelve months after date we or
either of us promise to pay to Thomas M^e
Knight Admr. of John M. Knight dec^d: the
sum of five hundred and fifty nine dollars
and 50 Cts. the Consideration of the purchase
of one undivided half of the following land, to wit:
The N.E. 28. 160 acres at \$2.02 per acre N.W. 28.

158 ⁶⁴/₁₀₀ acres at 220. ct. pr acre and the NE 32.
89 ⁶⁴/₁₀₀ at \$500. pr acre all in Ingham three North Range
9 West. And if a Claim of John Brady who
has a bond from John McKnight. for
100 acres. should encroach on or take part of
the above lands then there is to be a pro rata
deduction from the above sum. Witness our
hands and seals this 9th day of November 1833.
\$559.50
Attest. David Prickett Esq.
James Sample Esq.

And afterwards to wit on the 30th day of
March at the March Term AD 1844 of the
Circuit Court aforesaid before the Honorable
Samuel A Treat. judge thereof an order was
entered of record in the words following to wit
Thomas McKnight Administrator
of the Estate of John McKnight deceased Plaintiff
against
David Prickett Defendant
M. C. C.

This day came again
the parties by their attorneys, and the defendant
withdraws his plea filed herein and saying nothing
further in bar or preclusion of plaintiff's action
It is therefore ordered and adjudged by the Court
that the plaintiff as administrator aforesaid re-
cover of and from the said defendant the sum
of four hundred and thirty five dollars and
eighty one Cents part of the debt in plaintiff's
declaration mentioned and also the sum
of two hundred and forty four dollars and
ninety six Cents being damages for the detention
of the same and also his costs in this behalf
expended and that he have execution therefor

And afterwards to wit: on the 1st day of April at the March term AD 1844 of the Circuit Court aforesaid an order was entered of record in the words following to wit:

Thomas McKnight Adm. of  Plaintiff
John McKnight deceased.

against
David Prickett. Defendant. In Debt.

On Motion of the Plaintiff by his attorney, leave is given him to withdraw the note filed herein by exhibiting a Certified Copy thereof.

And on the further motion of the Plaintiff, It is ordered that a Summons in the nature of a scire facias issue herein directed to the Sheriff of Madison County Commanding him to summon James Temple to be and appear before the Circuit Court of Sangamon County on the first day of the next term thereof to be holden in ^{the City of} Springfield on the fourth Monday in the month of July next to show cause if any he can why he should not be made a party to the judgement rendered herein and be in all respects liable to pay the same,

You are therefore Commanded to summon in pursuance of the foregoing proceedings Commanded to summon the said James Temple to be and appear before the Circuit Court of Sangamon County on the first day of the next term thereof to be holden in Springfield on the second Monday in the month of November next to show cause if any he can why he should not be made a party to the

foregoing judgement and be in all respects
liable to pay the same, And have you then
there this writ.

SS

Witness John Calhoun Clerk of
our said Court at Springfield
this 18th day of September AD.
1844 J. Calhoun Clerk,
per Wm. Davis D.C.

(Which said writ of Scire facias was
afterwards returned with an endorsement
thereon by the Sheriff of Madison County in
the words and figures following to wit:

State of Illinois
Madison County SS. I have duly executed
the within writ by reading part of the same to
the within named defendant James Semple
and by him the said Semple acknowledging
and directing me to return the same duly
served on him this 24th day of September AD.
1844 Andrew Miller Shff. M.C. Ill.

And afterwards to wit on the 12th day of Nov-
ember at the November Term AD 1844 of the Circuit
Court for said County of Sangamon before the Hon-
orable Samuel H. Treat Judge thereof an order
was entered of record in the words following to wit:
Thomas McKnight Administrator of Plaintiff
The Estate of John McKnight deceased
against Scire facias to make party &c,
James Semple Defendant.

This day came the plaintiff by his attorney, and it appearing to the satisfaction of the Court that the defendant has been regularly served with process, and he being three times solemnly called came not but made default. It is therefore considered by the Court that the plaintiff's scire facias be taken for confessed against him.

And it further appearing to the Court that the said plaintiff did on the thirtieth day of March at the March Term A.D. 1844 of the Circuit Court for Sangamon County recover a Judgement against David Rickett in an action of Debt for the sum of four hundred and thirty five dollars and Eighty one cents debt and also for the sum of two hundred and forty four dollars and Ninety six cents damages, together with Costs of suit. It is therefore ordered and adjudged that the said defendant James Sample be made a party to said Judgement, and be in all respects liable to pay the same. It is therefore ordered that the plaintiff have execution therefor as well as for the Costs of this proceeding.

State of Illinois }
Sangamon County. } Sep. I John Cal-
houn Clerk of the Circuit Court in and
for the County and State aforesaid do
Certify that the foregoing pages contain
a true and correct copy of the record
and proceedings had in the cause
therein stated, as fully as the same
appears to me of record and on file

in my said office

In Testimony Whereof I have
hereunto set my hand and
affixed the Seal of said
Court at Springfield this 24th
day of February AD 1845.
Calhoun Clerk.

For Making record. both words 12:00 72

cert. ~~10.42~~

Paid by Temple

Calhoun Clerk.

State of Illinois - In Sup. Court
James Temple, Pltff in Error. — — —

vs.
Thomas M. Knight Admr. &c. Defs in Error. }

The said James Temple,
by M. Brazner his Atty, comes and says
that in the record and proceedings aforesaid
and in the rendition of the Judgment aforesaid,
there is manifest Error, in this: —

1. That inasmuch as the said James Temple
was not made a party to the original writ,
on the several in the ~~several~~ foregoing record
set forth he could not lawfully be made
a party thereto by ~~several~~ several, or to the Judgment
rendered therein by ~~several~~ several, but only by Sum-
mons &c as in ordinary cases, and that the Court erred

in entertaining jurisdiction of the case and
in rendering judgment against the said
James Sample therein

2. That the manner of service of the
writ of scire facias upon the said James Sam-
ple is irregular, and not according to
law.

For these errors, and others manifest
upon the record, and in the proceedings
aforesaid the said James Sample
prays that a supersedeas may issue
herein, and that the judgment aforesaid
may be reversed, set aside and held for
naught.

M. Brayman
Atty for Plff in error.

And now comes the Defendant in error by his
attorney Robbans & says that in the Record &
proceedings aforesaid there is no error, whereupon
he prays judgment for
Dec 18th 1845

Robbans attorney for
Defendant in Error.

The writ of error to be issued in this
cause, will operate as a supersedeas
on the part of the error James Sample
entering into bond in the penalty of
\$1361.54 with John S. Bradford
as his surety, payable to the dept. in error,
and conditioned as the law directs.

March 15th 1845.

Samuel H. Treat.
One of the Justices of the
Supreme Court of the
State of Illinois.

Thomas McKnight
Attor. at L.
vs. Record
James Sample.

Filed 17th Apr 1845

Clk
CH

Recd \$5.00
P

State of Illinois, sct.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of *Sangamon* 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 *Sangamon* county, before the Judge thereof, between *Thomas McKnight administrator of John M. Knight*

plaintiff and *James Simple*

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, 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 our 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 Springfield in the county of Sangamon, on the *second Monday of December* 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. William Wilson, Chief Justice of our said Court, and the seal thereof at Springfield, this *seventeenth* day of *March* in the year of our Lord one thousand eight hundred and forty-*five*

E. B. B.

Clerk of the Supreme Court.

Supreme Court.

James Simpk

Plaintiff in error,

vs.

Thomas Mathigh
Adm'r de Defendant in error,

This Writ of error. *is made a*
Supercedas as is to
be obeyed by all ac-
cordingly

Filed. *17th Mar 1842*

E. R. A.
clerk

I know all men by these presents that we James Sample and John S. Bradford are held and firmly bound unto Thomas Mc Knight administrator of the estate of John Mc Knight in the penal sum of one thousand three hundred and fifty one dollars and fifty four cents, which payment well and truly to be made we and each of us bind ourselves, our heirs, executors, administrators and assigns jointly and severally, firmly by these presents. Given under our hands and seals this fifteenth day of March A.D. 1845.

The condition of the above obligation is such that whereas the said Thomas McKnight administrator as aforesaid recovered a judgment against the said James Sample at the November term of the circuit court within and for the county of Sangamon and State of Illinois in the year of our Lord one thousand eight hundred and thirty four, on the twelfth day of said month for the sum of four hundred and thirty five dollars and eighty one cents, debt, and also for the sum of two hundred and forty four dollars and ninety six cents, damages, together with costs of suits; And whereas the said James Sample has removed the said suit into the Supreme Court of the State of Illinois, and had out a writ of error from the said Supreme Court, to operate as a supersedeas, according to the Statute in such case made and provided, upon the said James Sample entering into bond in the penal sum of one thousand three hundred and fifty one dollars and fifty four cents with the said John S. Bradford as security.

Now, if the James Sample shall well

and truly prosecute his said writ of Error in
the said Supreme Court, with effect, and pay
the judgments, costs, interest and damages
in case the said judgment shall be affirmed
in the said Supreme Court, then this obligation
shall cease and be void - otherwise to remain
in full force and virtue.

James Semple Seal
By M. Weyman his atty in fact.

John. S. Bradford Seal

Subscribed and entered into
before me this 17th. day of
March A. D. 1845. J. Calhoun
Clerk.

Clerk of the Circuit Court
within and for the County
of Sangamon - Illinois.

James Temple
or

Thos McKnight &c

Bond

Filed 17th July 1845
Wick
Cal

In Supreme Court.

James Sample, Plff in Error.

vs
Thomas M^cKnight, Admr of
John M^cKnight dec'd. Dfd in Com.

Mason Brayman

Attorney for said Plaintiff, being sworn says that
the said defendant Thomas M^cKnight, Administrator
se, is not a resident of the State of Illinois, but
is a non-resident, and without the reach of process of
this Court, as he is informed and believes.

Subscribed & sworn
before me, this 5th
day of Feby. A.D. 1840.

M. Brayman

Peck 1840

43.94 90

Ph. Sup. Court

per Sample

Mr. M. Wright ad

Sept. of non-residence

Supreme Court

James Scruple

~~tho~~

Thos^d Mc Knight Adm^r

Record

2854

Heasler