

No. 14105

# Supreme Court of Illinois

Charles Howell

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vs.

A. P. Miller et al

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71641  7

It is remembered that hereofore to wit on the 24<sup>th</sup> day of  
November 1837. Alexander B. Miller, caused to be filed  
in the office of the Clerk of the Circuit Court in and for the County  
of Macomb and State of Kansas the following transcript and  
appeal bond to wit

Charles Howell assignee of Pop. Hunk. Jacob C  
Gunterman and Jefferson Weatherford

Alexander B. Miller  
Judgment for the plaintiff against the defendant for security  
one dollar and seven cents debt and one dollar thirty one  
and four cents costs of suit Nov. Term 1837.

I do hereby certify that the above is the amount of the judgment  
in said case  
James P. Breen, J. P.

(Appeal Bond)  
Know all men by these presents that we, Alexander B.  
Miller and. Jacob Weatherford and firm  
bound unto Charles Howell assignee of Pop. Hunk  
Jacob C. Gunterman and Jefferson Weatherford in the special  
sum of Three hundred and fifty dollars, for the true payment  
\* of which we are bound, and dated at Macomb this 24<sup>th</sup> day of November 1837  
\* of the said sum, our heirs, executors, jointly and severally, and  
firmly by these presents. The condition of the above obligation is such  
that whereas on the fourth day of November 1837. Charles Howell  
assignee as aforesaid, received a judgment against Alexander  
B. Miller before James P. Breen, a justice of the peace within  
and for the County of Macomb in and for the County of the  
said Charles Howell, assignee as aforesaid, against the  
said Alexander B. Miller, for the sum of security one  
dollar and seven cents debt and \$1.31 1/2 cent costs of  
said sum which judgment the said Alexander B. Miller

has appealed to the Circuit Court of Masons River County - Now if the said Alexander P Miller shall pay the debt and all costs - in case the said judgment is affirmed on the trial of the appeal then this obligation to be void - otherwise to remain in full force and effect  
 Signed and delivered Alexander P Miller (S)  
 in presence of Breathouse jr (Seal)

Whereupon I issued from the said Clerk's office the following  
 Subpoenas and Summons to wit

(Subpoenas)  
 State of Illinois  
 Masons River County  
 Now to the Corner of said County To James Braden a Justice of the Peace and John Wood Constable of said County of Masons River  
 Whereas on the fourth day of November 1837 a Judgment was rendered by James Braden a Justice of the Peace within and for the County of Masons River against Alexander P Miller in suit instituted by Charles Howell a signer of Pepp's Note Jacob C Ginterman and Jefferson Weatherford against the said Alexander P Miller for seventy one dollars and 20 cent. debt and \$1.31 1/2 costs of suit from which judgment the said Alexander P Miller has appealed to the Circuit Court of Masons River County. You are therefore enjoined from proceeding any further in said suit - and required to suspend all further proceedings in relation thereto -

(S)

Witness my hand and Seal of said Court at Clarksville this 24<sup>th</sup> day of November 1837  
 Justice P. Hoxsey Clerk

Yrs McHay DC

Upon which subpoena was the following return to wit - duly served on John Wood Const. & James Braden J.P. on the 27<sup>th</sup> of November 1837  
 Robert Wallace Esq.

(Numbers)

State of Illinois  
 Macoupin County  
 Illinois

To the Coroner of said County Greeting you are  
 hereby Commanded to summon Charles Howell assignee  
 of Robt Stock, Jas C Guntzman and Affenri Math  
 aforesaid if he found in your County, to be and appear before  
 the Judge of our Circuit Court for the County of Macoupin  
 on the 2<sup>nd</sup> day of our next term thereof to be holden at the  
 Court house in the Town of Carlinville on the second Mon-  
 day in the Month of April next to answer to an appeal  
 obtained by Alexander B Miller from a judgement  
 rendered against him in favor of the said Charles Howell  
 assignee as aforesaid before James Braden a Justice of the  
 Peace of said County on the 4<sup>th</sup> day of November 1837 for  
 the sum of seventy two dollars debt and \$1.34<sup>cts</sup> costs of  
 suit - And show you then show this writ -

Witness my hand & the Seal of my Office  
 of our said Court at Carlinville  
 this 19<sup>th</sup> day of March 1838 -  
 Justice P. Hovey Clerk  
 J. M. C. Hay DC

(J.S.)

On which said summons was made the following return to wit  
 "I duly served the within named summons on Charles Howell & by said  
 my to him the 23<sup>rd</sup> day of March 1838. Jefferson Weatherford."  
 Robert Wallace Coroner

Afterwards to wit on the 9<sup>th</sup> day of April 1838 the said  
 Alexander B Miller caused to be filed in said Clerk's  
 office the following transcript of Justice's Summons  
 which is to wit -

(Transcript)

Charles Howell assignee of Weatherford, J. C. Guntzman & Robt Stock  
 vs Alexander B Miller

Action on note for \$69 dollars, drawn by the Alexander  
 B Miller on the 14<sup>th</sup> of April 1836. Payable to J Weatherford  
 J Gunterman & Robt Hanks twelve Months after date - Oct  
 the 26<sup>th</sup> 1837. Summons issued to J Wood Constable -  
 returnable the fourth day of Nov 1837. Constable returned Summons  
 duly served on the 27<sup>th</sup> day of Oct 1837. Nov the fourth  
 1837 it is considered that judgement be for the Plaintiff  
 for seventy one dollars and three cents and costs of suit

Justice Fee	Summons	10 <sup>3</sup> / <sub>4</sub>	Constable's fee	
	do	12 <sup>1</sup> / <sub>2</sub>	Serving Summons	25
Judgment		25	Mitige	20
Maniciple's fee		25		75
Entering appeal		25		
		\$ 1.06 <sup>1</sup> / <sub>4</sub>		

James Buder J.P.

I do hereby certify that the above is a true copy of my docket  
 James Buder J.P.

(summons)

State of Missouri  
 Madison County

To the People of the State of Missouri to w<sup>h</sup>o  
 Constable of said County Prentiss

You are hereby commanded to summon Alexander B Miller  
 to appear before me at my office on the 4<sup>th</sup> day of Nov  
 1837 at 10 o'clock A.M. to answer  
 the complaint of Charles Hance a copy of J Weatherford  
 J Gunterman, and Robt Hanks for a failure to pay him  
 a certain demand not exceeding one hundred dollars  
 and hereof make due return as the law directs -  
 Given under my hand and seal this 26<sup>th</sup> day of October  
 1837 James Buder (J.P.)

on the back of which summons was made the following return -  
 "Duly served on Alexander B Miller by reaching to him October  
 27<sup>th</sup> 1837"  
 J Wood Constable

1  
Afterwards to wit at a term of the Circuit Court begun  
and held at Cairoville in said County of Macoupin  
and State of Illinois on Monday the 9<sup>th</sup> day of April 1838  
present the Honorable Jesse B Thomas Jr Judge of the  
first judicial circuit the following order of Court was  
made to wit.

Charles Howell a signer of Hook  
Gentleman and Matthew  
vs. Alexander P Miller in Debt. In appeal

This day came the parties by their attorneys  
and through on motion of defendant, came a jury of Twelve  
good and lawful men summoned by the Court the Sher-  
iff being interested in the case to wit Chadrak McWhorter  
George Watta, David Stuart William Torres, George Jacob  
Stephen Sanger, Benjamin Lewis, James C Wilcox, C. Har-  
ris, Doest, Brd, Joseph Crawford and John Brown  
who being elected, tried and sworn, well and truly to try the  
cause and after having heard the evidence and the arguments  
of counsel returned the following verdict. We of the jury find for  
the plaintiff and assess his damages to seventy three dollars  
Therefore it is considered by the Court that the plaintiff recover of  
the said defendant the said sum of seventy three dollars the  
damages aforesaid found and assessed by the jury in favor  
aforesaid and also his costs, about his suit in this behalf expended  
as well in this Court as before the Justice and that he have execu-  
tion therefor.

Afterwards to wit on the 13<sup>th</sup> day of April 1838. the said Miller  
caused to be filed in the Clerk's Office of the said Court the following  
bill of exceptions to wit

Abundant proof of v.c.

Miller

mem

It is remembered that on trial of this cause

Plaintiff produced in evidence Note, the foundation of the action in words and figures following to wit - "Twelve Months after date I promise to pay Ross Huck Jacob G Gunterman & Jefferson Weatherford the sum of sixty nine dollars for value recd. as witness my hand & this 16<sup>th</sup> of April 1836

on the back of which note is the following endorsement - "we assign the within note to Alexander B. Miller, October 1<sup>st</sup> 1837. I Weatherford, J G Gunterman, Ross Huck"

And defendant made in evidence to the said Plaintiff assignors to defendant, in words and figures following to wit - "For and in consideration of Two notes this day given bearing even date with this further payment of the purchase money of the following described lot in Steubenville Illinois Lot No Block 2 & Lot 2 & 3, all in the same Block Block 14, Lot 1 & 4 in same Block. We the undersigned do hereby bind ourselves our heirs administrators executors upon the payment of said Note, according to the terms in it specified to convey to Alexander B Miller purchase of said lot the same by a general Warranty deed as witnesses our hands this 16<sup>th</sup> of April 1836.

\$ Amount of note. \$39.00  
Steubenville Illinois

Ross Huck.  
J G Gunterman  
J Weatherford."

And it was agreed, that the said note and bond were given in consideration of each other - in the progress of the case and further Plaintiff's assign was for certain lots, consideration of the Note, in the words and figures following to wit - "This indenture made and entered into this 22<sup>nd</sup> day of April in the year of our Lord one thousand eight hundred and thirty six - between Jefferson Weatherford and Milbey his wife of the County of Macoupin Jacob G Gunterman, and Ross Huck and Lucinda wife his wife, of the County of Madison and State of Illinois of the first part and Alexander B Miller, of the County of Macoupin and State of Illinois of the second part witnesses that the said party of the first part for and in consideration

of the sum of one hundred and thirty eight dollars in hand paid the receipt whereof is truly acknowledged. A fully grant bargain sell convey and confirm unto the said party of the second part his heirs and assigns forever the following described town lots situated lying and being in the town of Steubenville in the County of Wayne and State of Ohio and known and designated on the plan of said town as being lots No one and four in Block No fourteen, and lot No two and three in Block No two — Together with all and singular the appurtenances thereto belonging or in any wise appertaining. I have caused to hold the above described premises unto the said party of the second part his heirs and assigns forever, and the said party of the second part doth grant, bargain sell and convey the aforesaid premises unto the said party of the second part his heirs and assigns, against the claim or claims of all and every person whatsoever do & will warrant and forever defend by these presents — in witness whereof the said party of the first part hereunto set their hands and affixed their seals, the day and year first above written.

Signed sealed and delivered in presence of — Jefferson Weatherford (S)  
 Millberry & Weatherford (S)  
 Miss M. C. Senterman (seal)  
 Pop Huck. (Seal)  
 Lucinda Ann Huck (seal)

State of Ohio —  
 County —  
 I the undersigned an acting Justice of the Peace of said County do certify that Jefferson Weatherford and Millberry his wife, Jacob Senterman, Pop Huck & Lucinda his wife, whose signatures appear to the foregoing deed of conveyance & who are personally known to me to be the real parties who signed the same this day appeared before me and acknowledged that they had signed sealed and delivered the same as their free act and deed for the use and purposes therein expressed, and Millberry & Lucinda Ann wives of the said J. Weatherford & Pop Huck having been by me made acquainted with the contents of said deed, and being by me examined separate and apart from their husbands acknowledged that they had executed the same and relinquished their claims to the premises

thence conveyed, voluntarily, freely and without compulsion of  
their said husbands - Given under my hand and the seal  
of at this Twenty seventh day of June in the year of our Lord  
one thousand eight hundred and thirty six -

Edw. M. Lanning, J.P.

in the Book of which deed in the following endorsements - to wit: "Filed  
for Record. August 26<sup>th</sup> 1836" Pa. p. 100." & as follows -

State of Illinois -  
Macon County - for the undersigned Recorder for  
the County aforesaid do hereby certify that the foregoing deed and  
Certificate of acknowledgment are duly recorded in my office  
in Book C. Pages 405 & 406. Given under my hand at  
Columbia the 22<sup>nd</sup> day of August 1836  
Nathan Hayes, Recd

My defendant after plaintiff was offered in evidence. it was  
proposed attempt to prove that deed was executed & accepted  
that this deed was filed in office of Recorder by plaintiffs as-  
signor, that it was handed out by Recorder to a witness  
to collect fee for recording - that the witness applied to defendant  
for the fee for recording, which was paid by him & he received  
the deed, <sup>and promised to pay the recording fee</sup> that afterwards when the writ in this case was served  
he said that if he had not promised the payment of the fee  
he would not pay it - Defense in this case was failure of con-  
sideration of the note - Defendant offered to prove that plain-  
tiffs assignor - as proprietor of the town of Steubenville, on the day  
of sale of the lots (publicly proclaimed) and the execution of the  
title bonds, that they would build a stone Storehouse in the  
said town, two stories high - forty by twenty four feet -  
by the 1<sup>st</sup> day of August following - that they, & that they would  
construct a bridge across the big Macon in said town - and  
further that the said assignor had failed to perform (and comply  
with said promises to build a Storehouse and bridge as a breach of  
the consideration of said note, which was rejected by the Court -  
the Defendant by his counsel objects, and prays that this his bill of ex-  
ception may be signed, sealed & made a part of the record. J. P. Thomas (Clerk)

(De. Rice)

Charles Howard assignee of French  
Guntanaw & Washford  
Alexander J. Nicolson  
On Appeal  
April Term 1838

Costs made by deff and to be paid by him

Taking and filing appeal bond 36 $\frac{1}{2}$ docketing suit 12 $\frac{1}{2}$	68 $\frac{1}{4}$
Quin and filing summons, subpoenas and 1 Subpoena.	1. 68 $\frac{1}{4}$
Entering atty 12 $\frac{1}{2}$ . Entering appearance of deff. 12 $\frac{1}{2}$	25
Calling & swearing jury 18 $\frac{1}{4}$ . Swearing 2 Witnesses 12 $\frac{1}{2}$ .	31 $\frac{1}{4}$
Receiving and entering jury verdict	12 $\frac{1}{2}$
Making bill of costs	3 $\frac{1}{2}$
Entering Sheriff return upon and filing execution	18 $\frac{1}{4}$
" Satisfaction of judgement	25
Filing two bills of exceptions 6 $\frac{1}{2}$ each	12 $\frac{1}{2}$
	\$4.80

James Supaneda 100 Mileage 250. Fety 12 $\frac{1}{2}$ . 36 $\frac{1}{2}$   
 " Summons 50. " 19 $\frac{1}{2}$ . 62 $\frac{1}{2}$   
 " Subpoena on 4 Witnesses 100. " 14 $\frac{1}{2}$ . " 14 $\frac{1}{2}$ . 2.25 \$6.50  
 Jury fee 3.00. Docket Fee \$250. 5.50  
 Acopy Attest J. P. Murray Clerk Amt of deff. Costs \$16.00  
 J. P. Murray &c additional costs Transcript 2409 man. \$ 4.25  
 Certificate and seals 50

None.

None. 3 Costs made by deff and to be paid by deff  
 None. 3 Filing note 6 $\frac{1}{4}$ . 6 $\frac{1}{4}$   
 Entering atty 12 $\frac{1}{2}$ . Enty deff appearance 12 $\frac{1}{2}$  25  
 Swearing 2 Witnesses 12 $\frac{1}{2}$  Entering final judgt 25. 3 $\frac{1}{2}$   
 Making bill of costs 3 $\frac{1}{2}$  Swearing & docketing execution 62 $\frac{1}{2}$  1.00  
 Costs in Court below 1.68 $\frac{1}{4}$   
 Justice of Peace Exp. 1.10 1/4 J. P. Med Court 75 1.81 $\frac{1}{4}$   
 Acopy Attest J. P. Murray Clerk Amt of deff. Costs \$ 3.50  
 J. P. Murray &c

