

No. 12879

Supreme Court of Illinois

Parks

vs.

McElhaney

71641  7

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of

Jo Daviess

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Circuit* Court of *Jo Daviess* County, before the Judge thereof, between *Thomas S. Parks*

plaintiff, and *Robert W. McElhany*

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

Robert W. McElhany

as we are informed by *his* 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

To Thomas S. Parks

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 first Tuesday after the third Monday in April 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 *Thomas S. Parks*

notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice
of our said Court, and the Seal thereof, at Ottawa,
this *18th* day of *March* in the
Year of Our Lord One Thousand Eight Hundred
and Fifty-*nine*.

L. Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

Robert W. McElhany
Plaintiff in Error

Thomas S. Parks

Sci: fee

Served the Within Writ
this 1st day of April 1859
by Reading the Same to
the Within named
Thomas S. Parks
Sheriff fees

Mileage	1 00
Servis	6 50
Return	1 0
	8 50

J. A. Conley
Sheriff Del.

Jno. A. Rawlins
Atty for Plaintiff in Error
Filed April 6: 1859
L. Deland Clerk

Clerk Supreme Court-

At Ottawa Ill.

Enclosed please find a record of a cause tried in the 9th D. Cir Court - which I wish to bring before the Supreme Court upon Writ of Error.

Please present it to the Court or one of the judges thereof - And have them allow the same and fix the amount of the Bond required to have a supersedeas issue in this case. Also please send Bond here to be executed (if such be the practice of the Court) and I will have it executed and returned to you without delay.

If it is customary - or if required by law to pay any money upon bringing a cause into your Court as a fee - Please say what amount, and I will send it to you with the Bond.

I am Sir truly &c -

Jm. Hawkins

State of Illinois

Fourteenth Judicial Circuit

In David County, Illinois

Plas. in the Circuit Court begun & held with
in & for the County of David aforesaid.

the Third Monday in the month of October 1856

before the Honorable Benjamin R. Sheldon

Presiding Judge of the fourteenth Judicial
Circuit of the State of Illinois

George M. Mitchell Clerk. William R. Roddy Sheriff

Thomas S. Parks

vs
Robert W. McClanney

Be it remembered that
heretofore to wit on the 16th day of April A.D.
1856. the Plaintiff above named, by his attorney
filed in the office of the Clerk of the Circuit
Court in and for said County his process
in the above entitled Cause. Which said
process is in the words and figures follow-
ing to wit,

Thomas S. Parks

vs
Robert W. McClanney

To the Clerk of said Court

State of Illinois

Judicial Circuit

In Circuit Court

May Term 1856

Sum damages \$500

Upon the filing of this Declaration in your
Office, let a Summons issue to said defend-
ant returnable to the next term of the said
Court in an Action of Tress

Shirley Maginnis Plaintiff

Endorsed

Filed 16th April 1856

Geo W Mitchell Clerk
for Mr A Maddell Deputy

The Summons issued in the above entitled
Cause is in the words and figures following
to wit

State of Illinois, 2nd
In Davis County, 3rd The People of the State of Illinois
To the Sheriff of Davis County, Greeting

We Command you to Summon Robert W
McElhenny to appear before the Circuit Court
of Davis County at the next term, to be holden
at Galena on the Third Monday of May next
to Answer Thomas Parks in a plea of Tress
damages Three hundred Dollars and have
you then return this writ. Witness George W Mitchell
Clerk of the Davis County Circuit Court & Illinois
and the seal thereof at Galena this 16 day of April
A D 1856.

Attest Geo W Mitchell Clerk
for Mr A Maddell Deputy

Executed the within Summons this 24th
day of April A.D. 1886 by reading the same to
the within named R. H. McElhenny
Dec 1886
J. F. R. Reedy Sheriff

And afterwards to wit, on the 5th day of May
A.D. 1856 the Plaintiff by his Attorney, filed
in the Office of the Clerk of the Circuit Court
his Declaration in the above entitled
Cause which said Declaration is in
the words and figures following to wit:
State of Illinois }
In Davis County }
To the May Term A.D. 1856 of
the said Circuit Court

Thomas S Park,

Robert W McElhenny

✓ Prover Damages \$3000

Thomas S Park, the Plaintiff
in this suit complains of Robert H. McCleary
the Defendant in this suit complains of a plea
of Perver.

And that whereas the said plaintiff
heretofore doth sit, on the 23^d twenty third
day of February A.D. 1856 at the County of

Jo David's State of Illinois was lawfully se-
-ized of his own property of a certain Gold
Watch and Chain attached thereto, And being
so possessed the said plaintiff afterwards to
sue on the day and year first above mention-
-ed at the County of Jo David's aforesaid
Casualty lost the said Watch and Chain
out of his possession, And the same after-
-wards to wit on the day and year first
aforesaid at the County of Jo David's
aforesaid came to the possession of the
said Defendant by finding, yet the said
Defendant well knowing the said Watch
& Chain to be the property of the said
Plaintiff and of right to belong and ap-
-ertain to him but continuing and grand-
-ly intending craftily and subtly to
deceive and defraud the said plaintiff
in this behalf hath not as yet delivered
the said Watch ^{and Chain} or either of them to the
said plaintiff although often requested
so to do, ^{and hath wholly refused so to do} And afterwards to wit on the
day and year aforesaid at the County
aforesaid ~~and~~ converted and
disposed of the said goods and
Chattel to his own use.

To the damage of the said plaintiff in
the sum of Three hundred Dollars, law-
ful money of the United States.
And therefore he brings this suit.

Sturges & Maginnis
Plaintiffs Attorneys

Endorsed

Filed 8th May 1856

Geo M Mitchell Clerk
pr W C Wadwell depy
H

And afterwards to wit on the 20th day of
October A.D. 1856. At the October Term A.D.
1856, in the Record of the proceedings of said
^{said Circuit Court} Circuit Court appears the following entry
to wit

Thomas S Parks

vs

By Case Drown

Rob^t W McChancy

The defendant by
his Attorney comes and files his Plea

The Plea referred to in the last recited entry
is in the words and figures following
to wit

Robert W McElhenny & J. Davis's County, &
Advs } State of Illinois }

Thomas S Parks } In the Circuit Court
Do October Term A.D. 1856.

And the said Defendant by Jno A Rawlins
his Atty Comes & defends the wrong and
injury when &c And says that he is not
guilty of the said supposed grievances
above laid to his Charge or any or either
of them, or any part thereof in manner and
form as the said plaintiff hath above
thereof Complaind Against him. And
of this he the said Defendant puts him-
self upon the Country &c

Jno A Rawlins
Atty for Def^t

Endorsed

Filed 20th Nov 1856

Geo W Mitchell
Clerk

And afterwards to wit, on the 11th day of
November (as yet of said October Term A.D.
1856 of said Jo Daviess County Circuit
Court. The Honorable J. Wilson Surry Judge
of the Sixth Judicial Circuit, of the State of Illinois
presiding, in the absence of the Hon^{ble} Benjⁿ
R Sheldon. In the Record of the proceedings
of said Court in said Cause appears the
following entry to wit;

Thomas S Parks

vs

} Prover

Robert W McElhenny

Now at this day cause
the parties by their Attorneys and upon
issue joined, ^{the jury} came a jury of good and
lawful men to wit Louis Lesh Jones
McCarthy Chas Woodham W De Camp Jnr
Wilson. A Vonvolkenburg. Chester Williams
John McKimney Jas Lawrence J. N. Kimney
Jno Ferguson & M Bruchaney. Who were duly
elected tried and sworn after hearing
the evidence and arguments of counsel
the jury retired to consider of their verdict
and after a short absence they returned
into Court with the following verdict
to wit: We the jury find the defendant

Doct. 16th 1856

Guilty and assess the Damages of the Plaintiff at the Sum of Seventy five Dollars and the Plaintiff by his Attorney moves the Court for a new trial herein

And afterwards to wit on the 12th day of November A.D. 1856 as yet of said October Term A.D. 1856 of said District Circuit Court in the Record of the proceedings thereof in said Cause appears the following entry to wit

Thomas S Parks

vs

Prover

Robert H McElhenny

The Defendant by his Attorney Comes & files his Motion & Reasons for a new trial herein

The Motion so referred to in the last recited Entry is in the words and figures following to wit

Thomas S Parks

vs

Robert H McElhenny

State of Illinois

vs

On Circuit Court

October Term A.D. 1856

The said Defendant by his Attorney Comes & moves

The Court for a new trial herein and for cause
assigns the following reasons

- 1st The Court Admitted improper testimony on
the part of the Plaintiff
- 2nd The Jury disregarded the Instructions of the
Court in relation to the excluding of hearsay
evidence which was introduced by the plaintiff
- 3^d The Court Ruled wrong in permitting evidence
to go to the jury tending to show title to the property
derived through or by means of the drawing
of a Lottery ticket in a Lottery held contrary
to Law
- 4th The Verdict of the jury is Contrary to the evidence
- 5th The Verdict of the jury is Contrary to Law
- 6th The jury was misled by plaintiffs Counsel
who in the argument disregarded the rulings
of the Court in excluding improper testimony
from the jury
- 7th And for other good and sufficient reasons

John A Rawlin
Atty for Deft-

Endorsed,

Filed 12th Nov 1856

Geo W. Mitchell Clerk

To the Clerk of said Court

And afterwards to wit, on the 17th day of
November As yet of said October Term 1858
of said Indiana County Circuit Court
in the Record of the proceedings thereof, appears
of Record the following entry to wit:
Thomas S Parks

vs
Robert W McChancy

Now came on to be heard
the motion heretofore filed by the Defendant
by his Attorney for a new trial herein which
motion after argument by Counsel is over-
ruled by the Court And the plaintiff by his
Attorney moves the Court for judgment
upon the verdict of the jury heretofore returned
in this Cause. It is thereupon considered
by the Court that the ~~Defendant~~ Plaintiff
have and receive of the Defendant
the sum of Seventy five Dollars, so as
aforesaid assessed by the jury, together
with his costs in this behalf expended and
that Execution issue therefor, And defendant
by his Attorney prays an appeal

State of Illinois 3
In Damages Count, 3

William R Rowley, Clerk
of the Circuit Court, in and for said County,
in the State aforesaid, do hereby certify, that
the foregoing transcript is a true and
correct copy from the Records of all the
proceedings which were had in the aforesaid
Case of Thomas S. Park vs
Robert W. McElhenny.

In Testimony Whereof I have hereunto
set my hand and affixed the seal
of said County at my Office in
Galena this 12th day of February,
AD 1857

Witness W. R. Rowley, Clerk

Transcript \$ 3.00

Certification Seal 35

\$ 3.35

To the Clerk of said Court

Thos Sparks

vs

Robt W McElhenny

Adm. Attorneys to suit on the 17th Nov 1861

Robert W. McElhenny }
 Plaintiff in Error } Error to the Su-
 vs- } prem Court of the State
 Thos J. Parks. Deft. } of Illinois
 in Error

The Plaintiff in Error in this case assigns the following causes of Error - And makes the following Points.

- 1st Because the Record shows this cause was tried before J. Wilson Drury when by Law he was required to hold Court in the 6th Judicial District of the State of Illinois - And therefore the hearing of this cause before him - and the judgment by him rendered was and is contrary to Law Erroneous and void or voidable -
- 2^d The Plaintiff in the Court below by his own neglect was out of Court and could not have his said case there tried according to Law - And therefore the judgment rendered below is Erroneous -
- 3^d And for many other manifest Errors appearing in the Record -

The Plff. in Error prays a Writ of Error in this case, and also a Supercedas upon his entering into Bond in manner and form, and with such security as your Honors may require - All of which he is ready & willing to do -

Jno. A. Cowhins
 for Plaintiff in Error.

Robert W. McElhenny }
 Defendant }
 vs. }
 Thos J. Parks }
 Plaintiff }
 in Error }

Indorsed and
 May Term 1856
 Court of said Court

Robert W McElhenny plff. in error } In Supreme Court of
Thomas S Parks deft. in error } Illinois 3^d Division -
To April term A.D. 1859.

Now comes the said defendant in error & says
that in the record & proceedings in the above
entitled cause there is no error -
April 7th 1859 - Wighy & Small & Heland & Heland
attys for deft. in error -

Filed May 7, 1859
J. Heland
J. Heland

1858 21
Robert W. McElhenny
vs
Thomas S. Parks