

8521

No. \_\_\_\_\_

# Supreme Court of Illinois

John McElvain

---

vs.

County of Hamilton

---

71641  7



John McElwain &  
Leary S. Vise - Appellants  
vs

County of Hamilton, Appellee.

Appeal from Hamilton -

In the Supreme Court 1<sup>st</sup> Grand  
Division, November Term A.D. 1857.

Came this day the appellants by  
Nelson and in their own persons, and  
say that in the record, and proceedings  
herein, there is manifest error. Be-  
cause they say that the Circuit Court  
of Hamilton County, State of Illinois  
rendered a judgment in favor of  
the appellees, whereas by the law of  
the land the said Circuit Court ought  
to have rendered a judgment in favor  
of the appellants and against  
the said appellee, and this they are  
willing to verify &c.

And for assigning errors spe-  
cially upon the record aforesaid,  
the appellants say that the said  
Circuit Court erred

1<sup>st</sup> In not allowing the  
claim of appellants and rendering  
judgment therefor against the appellee,  
in said appeal case from the County  
Court of Hamilton County -

2<sup>d</sup> The Court erred in not  
reversing the judgment of the said  
County Court, and remanding the



Cause & with instructions to allow  
the claim of appellants against  
the appellee, in the County Court of  
Hamilton County -

(here insert 3<sup>rd</sup> error) Wherefore they ~~pray~~<sup>seek</sup> that the  
judgment of the said Circuit may  
be reversed -

Heldon & McElwain & Vice  
Attys for Appellants.

3<sup>d</sup> The Circuit Court of Hamilton County erred  
in rendering judgment in favor of appellee &  
against the appellants.

Forinder in Error J S Robinson  
for Appellee -



I was held before the Honorable  
Edwin Beecher presiding Judge of  
the Twelfth Judicial Circuit of the  
State of Illinois of which Hamilton  
County forms a part

Of James Lane County Judge  
of Hamilton County Illinois and  
William J. Malorie and James Reed  
Associate Justices of the County Court  
of said Hamilton County of the one  
part and C. S. Vise and John  
McClain attorneys at law of the  
other part do hereby submit and agree to the following facts in the  
following entitled cause to-wit;

Carry S. Vise &  
John McClain                      Assumpsit

vs  
The County of Hamilton

That the said  
Carry S. Vise and John McClain  
attorneys at law were duly ap-  
pointed by Edwin Beecher presiding  
Judge of the Hamilton Circuit  
Court to defend one Charles Reed  
who was indicted and prosecut-  
ed in said Circuit Court for the  
crime of forgery and alleged upon  
his arraignment that he was with-  
out counsel, unable to employ  
counsel and that he desired  
counsel appointed for him by the



appointment, the said Gary S. Vise  
and John M. Elvaine did proceed  
to defend said defendant, and  
that each of the above named attor-  
neys have ~~presented~~ against the  
County Court of said County a  
Charge of \$20. for the services of  
said and that for the services  
rendered by them in said Court  
the charge of twenty dollars to each  
is reasonable all of which facts  
we do hereby agree and consent  
to exist

James James C. J. H. 60  
J. J. Malone Co. J. P.  
Gary S. Vise  
John M. Elvaine

And afterwards term at the May  
term 1857 of said Circuit Court the  
following order was made

Gary S. Vise  
John M. Elvaine

as  
The County of Hamilton

Assessors

And now on this  
day came as well the plaintiffs as  
the defendants and upon issue  
being joined this cause was sub-  
mitted to the Court upon an  
agreed statement of facts filed  
herein which is ordered to be made  
a part of this record, and the Court



being sufficiently advised in the  
premises is of opinion that the law  
is with the defendants, Wherefore the  
verdict is that the defendants are  
awful of the plaintiffs the costs &c  
whereupon the said plaintiffs pray  
an appeal to the Supreme Court  
which is allowed without bond,  
defendants waiving bond &c

State of Illinois }  
Hamilton County } Set

J. J. Thorne Clerk  
of the Circuit Court in and for  
said County do hereby certify  
that the foregoing transcript is a  
true and perfect copy of the  
proceedings had at May term  
A D 1857 of said Circuit Court  
in the above styled cause as ap-  
pears of record &c

Witness J. Thorne Clerk  
of said Court and the  
Deaf Clerk at Newbern  
this 7<sup>th</sup> day of Oct, A D  
1857

J. Thorne Clerk



No 52

Wm & M O'Glewine  
applicants & plaintiffs in Cause No 107

County of Hancock Me.  
applicants & defendants in Cause No 107

Return to Warrant  
appeal from Warrant

Filed Nov. 21. 1857.  
N. Johnston clerk

Received - Nov. 24. 1857.  
by R. S. Nelson. Recd. - \$5.00  
Dues in Abstract - 1.00  
\$6.00

Refused



# SUPREME COURT OF ILLINOIS.

## FIRST GRAND DIVISION.

NOVEMBER TERM, A. D. 1857.

Record Page.

1. Carey S. Vise, and John Mc. Elvain, Appellants, }  
vs. } Appeal from Hamilton.  
The County of Hamilton, Appellee.

Appellants were appointed by the Circuit court of Hamilton County to defend a criminal indicted for "forgery." who desired counsel and was unable to employ counsel for his defense. At the subsequent term of the county court of Hamilton county, the appellants laid in a claim of \$20.00 each against the county as a fee for defending said criminal, which the court refused to allow. An agreed case was made out and sent up to the Circuit court, showing that the appellants were regularly appointed by the Court to defend, as aforesaid, and also that the services were rendered, and that \$20.00 each was a reasonable fee for the services.

2. At the May term of the year 1857, of Hamilton circuit court, when said agreed case was brought on to be heard, the court decided that the county was not liable for the fee of appellants, for defending a criminal in such case, and affirmed the judgement of the County Court.

3. An appeal was prayed from the judgement of the said circuit court, and the cause is now brought into this court for the purpose of reversing the said judgement, and testing the question of the liability of the county for the fee of the appellants for the service rendered, and for the errors assigned upon the record.

NELSON, VISE, & Mc ELVAIN. Attys.,

For Appellants.

*Brief of references relied on & referred to by appellants*

1. 4<sup>th</sup> Vermont reports 37 by analogy to Case of *Scamson* Criminals to be provided for, *Scamson* page 97.

2. Imprecation on Court to allow an attorney a reasonable fee *greenes* Town reports 473

3. an attorney paid for refusing to act 4 *Porter* Indiana Reports 525

4. In the Discretion of the Court to allow an attorney fee 4 *Porter* Reports 528  
I cannot be compelled to act without fee 6 *Porter* Reports 14

*N.B. fee allowed to Judge Pease. Nelson & Solman for appellants*



# SUPREME COURT OF ILLINOIS.

## FIRST GRAND DIVISION.

### NOVEMBER TERM, A. D. 1857.

Record Page.

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Carey S. Vise, and John Mc. Elvain, Appellants,

vs.

The County of Hamilton, Appellee.

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- At the May term of the year 1857, of Hamilton circuit court, when said agreed case was brought on to be heard, the court decided that the county was not liable for the fee of appellants, for defending a criminal in such case, and affirmed the judgement of the County Court.
- An appeal was prayed from the judgement of the said circuit court, and the cause is now brought into this court for the purpose of reversing the said judgement, and testing the question of the liability of the county for the fee of the appellants for the service rendered, and for the errors assigned upon the record.

NELSON, VISE, & Mc. ELVAIN, Attys.,

For Appellants.

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 70 \\
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 53
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52

McLellan & Coise

by

County of Hamilton

Witness

John 27. Nov. 1857.

A. McLellan M



30

William Brown

Seppa Crews  
 & Cyrus Staight

} Error to Wayne

Joinder in error

26

William Wilson &  
 James M Lewis

} Error to  
 Highland

Joinder in Error

28

Oakes

↪

} rule to Joine in

Benj Ward & Co

error by this morning

Joseph Boutis

41

↪

} 41 oppose rule

Andrew McCallen

51

H. T. Paces

↪

} appeal

County of Jefferson

52

John McElwain

↪

} 52

County of Hamilton

Joinder in error



55

James L Mc Cluer  
& Henry B. Lucas

"

James L. L. L. L.  
Saml Edmiston

error to  
Washington

Memorandum

of

Cases in

Supreme Court



**SUPREME COURT OF ILLINOIS.**  
**FIRST GRAND DIVISION.**  
**NOVEMBER TERM, A. D. 1857.**

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NELSON, VISE, & Mc. ELVAIN, Attys.,

For Appellants.

27 Green 47 3 2 corr ed.  
 4 VT 33-  
 42  
 4 Porter 5-25-  
 6 Porter 14-  
 4 Bluebf



M. E. L. & Co.

by

Committee of Management

Abstract



Filed 27. Apr. 1857.

H. J. L. & Co.



No 52

Nov 1857

John McElwain and  
Carey S. Wise  
my

County of Hamilton

Appl. for Hamilton

8521

Affirmed