

Pleas in the Jackson Circuit Court of the  
 term of October in the year of our Lord one  
 thousand eight hundred and thirty two before  
 the Hon. Thomas C. Browne Presiding Judge  
 of our said Court-

Be it Remembered that be it you to wit on  
 the 19th day of June A.D. 1832 Clark Green of  
 the County of Jackson came before Just Manring  
 an acting Justice of the Peace in and for the said  
 County and made before the said Justice his com-  
 plaint in writing against John Bowen of the  
 same County for a breach of the Law relative to  
 Mills and Millers which said complaint is in  
 the words and figures following to wit-

" State of Illinois } Clark Green being  
 Jackson County } duly sworn deposes &  
 Says that John Bowen

is an owner of a Public Mill in Jackson Co-  
 untly and that he has transgressed the provis-  
 ions of the Statute of this State relative to Mills  
 and Millers by taking too much toll for grinding  
 the grain of this Deponent and others and not  
 keeping an accurate set of Measures at his  
 Mill and further says not all as he verily  
 believes

Subscribed and sworn to by Clark Green  
 for me this 19th day of June  
 A.D. 1832 J. Manring J.P.

Whenceon afterwards to wit on the day and year  
 aforesaid the said Justice of the Peace issued a sum-  
 mon against the said John Bowen to appear be-  
 fore the said Justice to answer the said Clark Green  
 upon the Complaint aforesaid which said sum-  
 mon is in the words and figures following to wit  
 " State of Illinois Jackson County. } The People of  
 the State of Illinois to any Constable of said County,

Greeting. We command you to summon John  
Bowen to appear before me at my office in Beav-  
er Hills on Saturday the 30<sup>th</sup> instant at one o'clock P.M.  
to answer the Complaint of Clark Green for a  
Breach of the Law concerning Mills & Millen by  
taking too much Toll and for not keeping an ac-  
curate list of Measures and Make due return of  
this writ. Given under my hand and Seal June  
19<sup>th</sup> 1832. J. Manning

Which said Summons being put into the hands of  
John A. M. de Roy an acting Constable of the said Coun-  
ty was by him returned duly executed.

And afterwards on the said 30<sup>th</sup> day of June A.D.  
1832 it being the Return day of the said Summons the  
said Parties appeared before the Justice appointed at  
his said office and then and there such proceedings  
were had in the said case before the said Justice that  
Judgment was given against the said John Bowen  
for the sum of Ten Dollars and the Costs of such -

And afterwards to wit on the 18<sup>th</sup> day of July  
1832 the said John Bowen came and filed in the  
office of the Clerk of the Circuit Court of Jackson  
County his bond with approved security for the pur-  
pose of taking an appeal from the said Judg-  
ment which said Bond is in then words to wit

" Know all men by these Presents that we John  
Bowen and Isaac Hubbard are held and firmly  
bound unto Clark Green his heirs and assigns in the  
penal sum of forty Dollars lawful money of the these  
United States for the Payment of which well and truly to  
be made and done we bind ourselves our heirs Ex-  
ecutors and administrators jointly and severally  
firmly by these presents Made and Sealed with  
our Seals and Dated at Beaverville this 18<sup>th</sup> day

of July A.D. 1832 the condition of this obligation is  
such that whereas the said John Bowen has taken  
an appeal from the judgment of said Manning  
rendered on the 30th day of June last for the sum  
of five dollars debt with costs of suit in favor of  
the Plaintiff in a case in which Black Green was  
Plaintiff and said Bowen defendant for the purpose  
of taking the same before the Circuit Court of Jack-  
son County. Now if on the trial of said case before  
said Court the judgment below be affirmed and the  
said Bowen shall pay a cause to be paid the Debt  
Damages and all costs which or may accrue there-  
on according to the order or judgment of the said  
Circuit Court then and in that case this obliga-  
tion shall be void and of no effect else shall re-  
main in full force and virtue John Bowen isca

D. Hubbard scac

And this upon citation on the 24th day of July  
A.D. 1832 was issued out of and from the said Clerk's  
office a writ of Supremacy directed to the said Jus-  
tice of the Peace which is in these words to wit

"State of Missouri } of the People of the State of  
Jackson County } Missouri to said Manning  
a Justice of the Peace greeting

Whereas John Bowen has filed his bond with  
approved Security in the Clerk's office of the  
Jackson Circuit Court for the purpose of taking  
an appeal from your judgment rendered on the  
30th day of June last for five dollars debt with  
costs of suit in favor of the Plaintiff in a case  
in which Black Green is Plaintiff and said John  
Bowen is Defendant therefore you are com-  
manded to stay all further proceedings in said  
case and forthwith file in the said Clerk's office  
all papers in your hands appertaining to said

case and hereby said not. Witness My hand & Seal  
of the said Court and the  
of the said Seal of said Court at Brownsville this 24<sup>th</sup>  
day of July A.D. 1832 J. Manning Clerk

And also afterwards on the day and year last  
of said was issued out of and from the said  
Clerk's office a writ of Summons to the said  
Clark Green which is in the following wo-  
rds and figures to wit.

"State of Missouri Jackson County, ss. The  
People of the State of Missouri to the Sheriff of Jack-  
son County - Greeting. We command you to sum-  
mon Clark Green to appear before the Circuit Court  
of Jackson County on the first day of their term  
to be held at the Court house in the town of Bro-  
wnsville in and for the said County on the second Mo-  
nday of October next at which a certain spe-  
cial case from the Judgment of J. Manning in  
which said Green is Plaintiff and John Brown  
is Defendant is set for trial and make due re-  
turn of this writ. Witness My hand & Seal of the  
said Court and the official seal of the said Court at Brownsville this  
24<sup>th</sup> day of July one thousand  
eight hundred and thirty two J. Manning Clerk

Which said Summons having been put  
into the hands of the Sheriff of Jackson County, was  
by him returned with the following endorsement  
"Executed on the 4<sup>th</sup> day of August 1832 by  
Reading the within to Clark Green - J. Gregg Sff. of J.C.

And afterwards at a Circuit Court of Jackson  
County held at the Court house in the town of  
Brownsville in and for the said County on 12<sup>th</sup> day  
of October A.D. 1832 the said Parties came the

Plaintiff by his attorney A. Fild and the Defendant by Breese & Baker his attorneys and put themselves upon the Court for trial and after examination it is ordered and considered by the Court that the Judgment below be affirmed and that the said Plaintiff do Recover of the said Defendant the sum of five & allan for his Damages as well as his costs and Charges about his suit in this behalf expended both in this Court and in the Court below and have execution therefor & Judgment on the Defendant by his said attorneys excepted to the opinion of the Court and having presented his said Bill of exceptions the same was signed sealed and ordered to be filed and made a part of the Record which said Bill runs thus words

Clark Green	Plff.	} An appeal for penalty under the act respecting mills and Millers
John Bowen	Def't	

Be it remembered that on the trial of this cause the Plaintiff proved that the Defendant kept a water grist mill and grinds for toll and that for grinding Corn he took one fifth part for the toll. The Defendant then proved by his Miller who kept the mill that notice had been given to all the Customers at this mill before he commenced operations at the mill that he would not grind for the legal toll but would demand and have for toll one fifth. That the Customers all grinded with this knowledge and that the Plaintiff himself was informed of it and had his Corn grinded upon the same terms. That there was no concealment or Secrecy about it but that Defendant had used all the means in his power to make his terms known. The Defendant also

Proved that when the Plaintiff's son came with  
his Corn he told him what toll he would leave  
or he would not grind his Corn and that he  
assented to the terms by leaving his Corn ground.  
The Plaintiff also proved by a witness that he  
witness after the Mill was in operation came to  
the Mill to get his Corn ground and asked the  
Miller how much he would ask for grinding  
the Miller replied one third Witness said he would  
not give that but got his Corn ground for one  
fifth. The Court decreed the Plaintiff was en-  
titled to recover and that the Defendant had  
violated the act regulating Mills & Millers and  
affirmed the Judgment of the Court below and  
entered Judgment against the Defen-  
dant for the Penalty of five dollars. In which  
opinion of the Court in affirming said Judgment  
and in rendering Judgment against the Defen-  
dant the said Defendant excepts and prays the  
Court to sign and seal this his bill of exceptions  
and make the same a part of the Record all  
which is done. J. C. Browne Seal

And afterwards on the same day and year  
aforesaid came again the said Parties by their said  
attornies and the said Defendant having petitioned  
said Bill of Exceptions prayed the Court for an  
appeal in this case to the Supreme Court of this  
State and it is ordered by the Court that the said  
appeal be granted upon the condition that the petitioner  
with the Clerk of this Court his bond conditioned ac-  
cording to law with a penalty of one hundred dol-  
lars with said Husband his Security which se-  
curity is approved of by the Court) within thirty  
days from this date. And afterwards to wit

on the 14 day of November A.D. 1832 The said John  
Bowen came and acquainted with the condition of the said  
order of the said Circuit Court filed his bond with the  
said Husband his security thus in these words to wit  
" Know all men by these Presents that we John  
Bowen and the said Husband are and law-  
fully bound unto each other his heirs and assigns in  
in the Penal sum of one hundred dollars Lawful  
money of the United States for the Payment of which  
will and truly to be made and Done we bind our-  
selves our heirs Executors and administrators jointly  
and severally jointly by these Presents. Made and  
Sealed with our Seals and Dated at Brownsville  
this 2 day of November A.D. 1832.

The condition of this obligation is such that when  
ever the above bond John Bowen was obtain-  
ed an order of the said Circuit Court for an ap-  
pear in the case in said Court in which said  
Queen was Plaintiff and the said Bowen was Defen-  
dant to the Supreme Court of this State. Now if  
the said John Bowen shall duly present his said ap-  
pear before the said Supreme Court and if on the  
trial thereof the Judgment below be affirmed shall  
pay or cause to be paid the Debt Damages inter-  
est and all costs which now or shall accrue there-  
on in case the said Judgment below be affirmed  
agreeable to the Judgment of the said Supreme Court  
then this obligation shall be void and of no effect  
else remain in full force and effect.

John Bowen seal  
D Husband seal

The Costs in the  
aforesaid case having been taxed according to Law  
and entered on the fee Book of the said Court are as  
follows both the Plaintiff's and the Defendant's costs  
to wit

Clark Green vs John Bowen Bill of Cost by the Plaintiff.

Clerk's Filing one Paper 6<sup>1</sup>/<sub>4</sub> four Subpoenas 2.00 filing 2.06<sup>1</sup>/<sub>4</sub>  
 the same 25. Docketing 12<sup>1</sup>/<sub>2</sub> returning attorney 12<sup>1</sup>/<sub>2</sub> on 50  
 taking appearance 12<sup>1</sup>/<sub>2</sub> Swearing those witnesses 18<sup>1</sup>/<sub>4</sub> on 31<sup>1</sup>/<sub>4</sub>  
 taking judgment 25 Satisfaction of judgment 25 officia. 50  
 wit 12<sup>1</sup>/<sub>2</sub> filing 6<sup>1</sup>/<sub>4</sub> . . . . . 18<sup>3</sup>/<sub>4</sub>

Sherriff's Cost Docket fee 2.50 2.50  
 on Subpoenas 2.45<sup>1</sup>/<sub>2</sub> 2.45

Justice Cost Appraiser 12<sup>1</sup>/<sub>2</sub> Summons 18<sup>1</sup>/<sub>4</sub> Docketing  
 12<sup>1</sup>/<sub>2</sub> Subpoenas 1.12<sup>1</sup>/<sub>2</sub> Verii 25 Swearing  
 Jury 12<sup>1</sup>/<sub>2</sub> Swearing witnesses 37<sup>1</sup>/<sub>2</sub> Judgment 25 on-  
 taking appeal 25 transcript 25 } 3.06<sup>1</sup>/<sub>4</sub>

Comptroller Cost. On Summons 40 On Subpoenas  
 one 1.67<sup>1</sup>/<sub>2</sub> On Verii 50 attendance 25 } 2.82<sup>1</sup>/<sub>2</sub>

Cost by the Defendant

Bond 50 filing Hyuntion of Bond 12<sup>1</sup>/<sub>2</sub> Sum- 62<sup>1</sup>/<sub>2</sub>  
 mons 50 filing 6<sup>1</sup>/<sub>4</sub> returning attorney 12<sup>1</sup>/<sub>2</sub> cutting 68<sup>1</sup>/<sub>4</sub>  
 appearance 12<sup>1</sup>/<sub>2</sub> Swearing one 6<sup>1</sup>/<sub>4</sub> on 43<sup>1</sup>/<sub>4</sub>  
 filing one paper 6<sup>1</sup>/<sub>4</sub> Bond 50 filing 6<sup>1</sup>/<sub>4</sub> 52<sup>1</sup>/<sub>2</sub>

Recess 38 folios at 12<sup>1</sup>/<sub>2</sub> = 4.12<sup>1</sup>/<sub>2</sub> Certificate & seal 50 = 4.62<sup>1</sup>/<sub>2</sub>  
 7.00

State of Illinois } I John Manning Clerk of the Circuit  
 Jackson County } Court of Jackson County do Certify

that the foregoing is a full and true  
 Record of the above mentioned case as appears from  
 the Record and papers on file and now remaining  
 in my office - Green under my hand and the of-

ficial Seal of the said Court at Bes-  
 wickville this 17th day of Octo-  
 ber 1882 -

J. Manning Clerk



John Bowyer

Black v Green Green sued Bowyer before a Justice of the Peace to recover the penalty of \$50 inflicted by the M<sup>rs</sup> Sec. of the act regulating Mills & Millers passed 9 Febry 1827 for taking more toll than is allowed by the 11<sup>th</sup> Sec. of said Act.

Green removed before the Justice & the cause was removed by appeal to the Circuit Court, where the judgment of the Justice was affirmed for \$50. To reverse this judgment the cause is brought into this Court by Writ of Error.

A preliminary objection has been raised whether a Writ of Error will lie in a case where the recovery is under \$20 exclusive of Costs, & to support this objection the case of Black v Rofs, 10 Price Rep 211 has been <sup>cited</sup> ~~mentioned~~.

If the decision of that case was correctly made, the objection is well founded & this cause ought to be dismissed for want of Jurisdiction in this Court. - The maxim, Stare Decisis is one great

of great importance in the administration of Justice ought not to be departed from for slight or trivial causes, yet this rule has never been carried so far as to exclude Courts from investigating former decisions where the questions have not undergone repeated examination & settlement - Whenever the construction of a Statute has been repeatedly given in the same way or where a construction has been given & acquiesced in for a number of years, it would be manifestly improper for a Court to disturb questions thus settled.

But in the case of Black v Rofs is the only case in which this Court have been called on to settle the right of parties to bring Writs of Error to this Court & that decision has not it is understood by the Court given satisfaction to the bar.

Under these circumstances I think it the duty of this Court to reverse that decision. That decision is based upon the <sup>idea</sup> ~~supposition~~ that Writs of Error are ~~of a~~ <sup>of a</sup> ~~particular~~ <sup>particular</sup> nature & that the Legislature by limiting appeals to cases where the judgment, exclusive of Costs, should amount to \$20, had used the word "appeals" in its broadest <sup>Constitutional</sup> ~~most extensive~~ sense & thereby had included Writs of Error. "Were the Court right in ~~the~~ giving this <sup>construction</sup> ~~construction~~ to the word "appeals"?" At common law the only mode of removing a cause from an inferior Court of Record to a

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Superior Court for reversal, was by writ of Error & this writ is a writ of right which cannot be denied except in capital cases. To obtain a writ of Error it is necessary to apply to the Clerk of the Supreme Court & then it <sup>does</sup> not operate, as a stay ~~to~~ execution, unless an order ~~is~~ obtained from a Judge for that purpose. From this statement it is obvious that considerable delay would intervene before a writ of Error could be obtained & in the mean time an execution could be issued on the judgment & a party against whom an erroneous judgment had been given might be put to considerable trouble & expense.

To remedy this evil, it is fairly presumable, that the Legislature gave the additional remedy by appeal.

By taking an appeal, which is done when the judgment is rendered, the effect of the judgment is entirely suspended until the appeal is decided. From this view of the subject, I am satisfied that the Legislature, in authorizing parties to take "appeals," and that term, ~~only~~, as a description of the mode, solely intended to give a more expeditious & less expensive means of taking a cause from an inferior to a Superior Court. An appeal ought therefore to be considered as a <sup>an</sup> immediate remedy & consequently any restriction upon the right to use the remedy, cannot with propriety be extended to other remedies or modes of redress provided by law.

This construction is fortified, by the consideration, that by an Act passed July 19. 1829, entitled an Act regulating the Superior & Circuit Courts, which act seems not to have been noticed by the Court in the former case, the remedy by appeal & Error, are noticed, as different modes of bringing causes into this Court.

Another consideration is, <sup>entitled to</sup> a great weight in arriving at a correct result on this question, ~~that is, by the Court on the~~ ~~Constitution of this State, that much injustice must necessarily result from the decision in Clark & Pop, if adhered to.~~ Many cases might be stated, when a party would be entirely deprived of all redress, ~~where in cases~~ where manifest injustice has been done in the Court below. I will only state one case to illustrate the great impropriety of sustaining the decision of Clark & Pop. A. brings an action on a note for \$1000 & the Court below by an erroneous decision reduced the debt under \$20 or by default on my decision the verdict is given for the Defendant. Now if the case of Clark & Pop, is to be deemed law, A. in the supposed case would be entirely

without remedy. Can it be supposed that the Legislature intended any such injustice? I doubt this court to sustain a decision, unless compelled by express legislative enactment, which will produce such results? The old Salutory rule of the Common Law, that a writ of error, is a writ of right & cannot be denied except in capital cases, ought not to be abolished by implication & construction & particularly where it is evident, that the Legislature could not have contemplated its repeal. We are therefore clearly of opinion that the case of Clark vs. Ripps, ought to be overruled.

Having disposed of this preliminary question, I come to the Assignment of Errors in this case - The first Assignment is that a Justice of the Peace had no Jurisdiction of subject matter of this Cause. The Statute giving the penalty, authorizes the party injured to sue for the penalty, in any Court having Cognizance thereof.

The question here arises, have Justices of the Peace any jurisdiction over penal ~~Statutes~~ <sup>Offences</sup>? By a careful examination of the several cases enumerated in the general act giving Jurisdiction of the Peace Jurisdiction, I am satisfied the Legislature only intended such is the obvious import of the Act to confine their jurisdiction to Actions arising on Contract. Actions of Debt for penalty inflicted by Statute can in no sense be considered as an ~~contract~~ <sup>express</sup> or even an implied contract. Penalties Statute penalties, are in the nature of punishment & persons who incur their liabilities are considered as tortfeasors - see case of Coler vs. The County of Middlesex - Brown Repts 115 -

In relation to what Courts have Cognizance of penal Actions, the following down in Osprey on Penal Statutes, to wit  
"with respect however to Statutes giving Jurisdiction, a difference must be observed as to the Superior & Inferior Courts, the Courts above may have jurisdiction by implication, and the cases of penal Statutes, mentioned before, such as Rex vs. Mather's ante fol 9. prohibiting any matter of public concern under a penalty, but <sup>appropriating it</sup> without which is a debt due to the Crown & recoverable in the Court of Exchequer - That might be sued for in the Courts above, though they are not named; but no inferior Court or jurisdiction can have Cognizance by implication of any penalty recoverable under a penal Statute by <sup>expressly</sup> mentioning they must be expressly mentioned in the Statute themselves Cognizance be given to them in express terms."  
Jurisdiction not having been given <sup>expressly</sup> to Justices of the Peace

We are of opinion that the Justice in this case had  
no jurisdiction, & the Judgment of the Circuit Court, for  
this reason must be reversed - with costs.  
Other errors have been assigned & argued, but the  
Court not being entirely satisfied relative to them  
give no opinion -

Given  
is  
Given  
Given

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Supreme Court

Green

John Brown

In error

The said Green by Baker  
his attorney comes & moves the court  
to grant the writ of error in this  
case if said, because

1. The judge of the circuit court on 4  
or while the said writ of error is read  
out does not read evidence of facts to  
twenty dollars, nor does it relate to a  
production or franchise -

D. J. Baker  
for writ in error

Green  
et  
Bowen } In em

Reasons for  
quitting the work  
of em.

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Filed Dec. 21. 1882.

Mrs. to work with you

Clark Green

John Bowen

John Bowen - p<sup>off</sup>. in Euro } Euro to Jackson  
Clark Green - Dep<sup>t</sup>. in Euro }

And afterwards took at the December term 1832 of  
the Supreme Court cases the said John Bowen by  
Green in atty. And says that in the record and  
proceedings aforesaid and in rendering the judgment  
aforesaid he manifestly ~~in~~ error has intimated to  
the injury of the said John Bowen, and that the  
Court and in rendering judgment against the  
said Bowen and in favor of said Green, when  
by the laws of the land judgment should have  
been rendered in favor of the said Bowen  
and against the said Green, and also in  
this that the Court decided that the Mill  
of said Bowen was a public Mill, when  
it was proved by said Bowen that it was  
not a public Mill within the true intent  
and meaning of the act <sup>regulating</sup> ~~regulating~~ Mills  
and Millers approved Feb. 9. 1827, & the  
said Bowen never having taken the toll allowed  
by said act at <sup>his</sup> said Mill - for them and other  
owners appearing on the said record, the said

Brown prays that said prof. may be rewarded &  
be returned to all things he may have lost by  
reason of ridding the same.

J. Brown Atty. for said

Brown offf. in Bus

London in Bus

Filed  
for you

John Brown

Black Peer

Applicant of Bus

Filed Dec. 15. 1892

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John Bowers —

Clark here

} On Error to Jackson  
John Bowers appellee }  
Clark's Gun appellee }

It is agreed by the counsel for the parties  
in this case that the ~~issue of law~~ <sup>case</sup> shall  
be argued at the present term, and upon  
the Court delivering their opinion thereon  
either reversing or affirming the decision  
of the Court below, that the appeal

granted herein shall be dismissed  
at the costs of the appellant.

Dec. 20. 1832

Sidney Reese for  
pleff in error  
A. P. Field for deft.  
in error  
by 209 Baker.

Supreme Court  
John Brown <sup>appellee</sup>  
vs  
Clark Green <sup>appellee</sup>

same }  
vs }  
same } In error

Agreement

Filed Dec. 20. 1832.

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Clark Green

v

John Bowers

Receipt

Filed Dec 15 1832

Bowers Green

v

Clark Green

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