No. 11906

Supreme Court of Illinois

Ball

vs.

McClure

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Lemuel H. Ball

vs

Jacob McClure

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11906

A Record of the orders & proceedings of the Honorable Circuit Court of Marshall County begun & held at the Court House in the Town of Lacon on the third Monday the 20th day of March in the year of our Lord one thousand Eight Hundred & forty Eight present the Honorable John D. Caton associate Justice of the Supreme Court of the State of Illinois & Judge of the Ninth Judicial Circuit

Tuesday Morning March 21st

Present as before

Jacob McClure
vs
Lemuel H Ball } Assumpsit

This day Came the parties by their Attorneys & the defendant having filed herein his general Demurrer to plaintiffs declaration & upon being joined thereon and the Court being fully advised in the premises is of opinion said Demurrer be sustained whereupon on Motion of plaintiff the Cause is Continued with leave to Amend the first Count in plaintiffs declaration it is therefore Considered that the defendant recover of the plaintiff his Costs of Contemnoner herein expended in his defence & have execution therefor

A Record of the orders judgments & proceedings of the Honorable Circuit Court of Marshall County & State of Illinois begun & held at the Court House in the town of Lacon on the 13th day of October Eighteen hundred and forty Eight present the Hon John D Caton Judge of the Ninth Judicial Circuit of said State

Tuesday Morning Oct. 31st

Present as before

Jacob McClure
vs
Lemuel H. Ball } Assumpsit

This day Came the parties by their

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Attorneys and the plaintiff having filed herein his amended Declaration this Cause is Continued on affidavit of defendant at his Costs It is therefore Considered by the Court that the plaintiff recover of the defendant his Costs & Charges by him about his Suit of this Continuance expended & have execution therefor

A Record of the order Judgments & proceedings of the Honorable Circuit Court of Marshall County in the State of Illinois begun & held at the Court House in the Town of Lacon County & State aforesaid on the third Monday the 19th day of March Eighteen Hundred & forty Nine

Tuesday March 20th

Present as before

Jacob M'Clure
vs
Lemuel A. Ball } In assumpsit

This day Came the parties and the presiding Judge having been Counsel herein for defendant the venue of this Cause is Changed to Woodford County

State of Illinois } Circuit Court Marshall County
Marshall County } Ill To March Term AD 1848
Jacob W M'Clure } Assumpsit Damage $500.00
vs
Lemuel A Ball

The Clerk will issue Summons as above returnable as above directed to Sheriff Marshall Co

J. Ramsey Atty for Aff

Lacon March 7th 1848

State of Illinois } In the Circuit Court of March
Marshall County } Term A.D. 1848

Jacob McClure complains of Lemuel B. Ball summoned &c of a plea of trespass on the case on promises for that whereas heretofore to wit on the first day of May in the year of our Lord Eighteen hundred & forty seven at the County of Marshall aforesaid in Consideration that the plaintiff then & there at the special instance & request of said defendant agreed & promised to sell & deliver to said defendant at the Town of Lacon in the County of Marshall & State aforesaid on or upon the first day of January in the year of our Lord Eighteen Hundred & forty Eight Twenty five pork hogs weighing not less than three Hundred pounds each the said defendant then & there promised the said plaintiff on the delivery of said hogs to pay him therefor the sum of four dollars for each one Hundred pounds said hogs weighed and to be paid to said plaintiff by said defendant upon the delivery thereof and the said plaintiff avers that upon the said first day of January in the year of our Lord Eighteen Hundred & forty Eight to wit upon the 23rd day of December A.D. 1847 at the Town of Lacon aforesaid at the County of Marshall & Circuit aforesaid pursuant to said contract the said plaintiff did offer to deliver to said defendant twenty five pork hogs no one of which weighed less than ~~three~~ Hundred pounds yet the said defendant disregarding his said promises craftily & subtilely intending to defraud & deceive the said plaintiff in this behalf would not receive said pork hogs nor pay for the same but to receive said pork hogs & pay therefor then did & still does entirely refuse and fail and for that whereas heretofore to wit on the first day of May in the year of our Lord Eighteen hundred & forty seven at the County of Marshall & Circuit aforesaid the said defendant bargained for & bought of the said plaintiff and the said plaintiff at the special instance & request of the said defendant then & there sold to the said defendant

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Twenty five pork hogs no one of which would weigh less than three hundred pounds at the rate of four dollars for each one hundred pounds Each of said hogs should weigh to be delivered by the plaintiff to the said defendant at the town of Lacon in the County of Marshall aforesaid on or before the first day of January in the year of our Lord Eighteen Hundred & forty eight and to be paid for by the said defendant on the delivery thereof as aforesaid and in Consideration thereof & that the said plaintiff at the like special instance & request of the said defendant had then & there undertaken & faithfully promised the said defendant to deliver the said pork hogs to him the said defendant at the time & at the place aforesaid & the said defendant undertook & faithfully promised the said plaintiff to accept of said pork hogs of and from him the said Plaintiff & to pay him for the same on the delivery thereof to the said defendant as aforesaid & altho the said plaintiff afterwards & before the first day of January in the said year of our Lord Eighteen Hundred & forty Eight & after the Making of the said promise and undertaking of the said defendant to wit on the 23rd day of December in the year of our Lord Eighteen Hundred & forty seven at the said Town of Lacon in the County & Circuit aforesaid the said plaintiff was ready & willing & then & there tendered and offered to deliver the said Twenty five Pork hogs to him the said defendant & then & there requested him the said defendant to accept the same & to pay him for the same as aforesaid No one of which weighed less than four Hundred pounds yet the said defendant not regarding his said promise & undertakings but contriving craftily and subtilly to deceive & defraud the said plaintiff in this behalf nor did nor would at the said time when he was so requested as aforesaid or at any time before or afterwards accept the said Pork hogs or any of them of & from the Plaintiff & pay him for the same and then & there wholly neglected & refused to do so And for that whereas heretofore to wit on the first day of May in the year of our Lord Eighteen Hundred & forty seven

at the County of Marshall & Circuit aforesaid in Consideration that the Plaintiff then & there at the Special instance and request of said defendant agreed & promised to sell & deliver to said defendant at the town of Lacon in the County of Marshall & State aforesaid on or before the first day of January in the year of our Lord Eighteen Hundred & forty Eight twenty five Pork hogs weighing three Hundred pounds each the said defendant then & there promised the said Plaintiff on the delivery of said Pork hogs to pay him therefor the sum of Four dollars for each one hundred pounds said Pork hogs weighed & to be paid by said defendant to said Plaintiff on the delivery thereof and the said Plaintiff says that before the said first day of January in the year of our Lord Eighteen hundred & forty Eight to wit on the 23rd day of December in the year of our Lord A.D. 1847 at the town of Lacon aforesaid at the County of Marshall & Circuit aforesaid pursuant to said Contract the said Plaintiff did offer to deliver to said defendant twenty five pork hogs each one of which weighed three hundred pounds or upwards yet the said defendant disregarding his said promise & craftily & subtilly intending to defraud & deceive the Plaintiff in this behalf would not receive said Pork hogs nor pay for the same but to receive said Pork hogs & pay therefor then refused & still does entirely fail & refuse. And for that breach he sues on the first day of May in the year of our Lord eighteen hundred & forty seven at the County of Marshall & Circuit aforesaid the said defendant Bargained for & bought of the said Plaintiff and the said Plaintiff at the special instance & request of the said defendant then & there sold to said defendant twenty five Pork hogs each one of which was to weigh three hundred pounds at the rate of four dollars for each one hundred pounds each of said pork hogs should weigh to be delivered by the said Plaintiff to the said defendant at the town of Lacon in the County of Marshall aforesaid on or before the first day of January in the year of our Lord Eighteen hun-

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dred & forty eight and to be paid for by the Said defendant on the delivery thereof as aforesaid and in Consideration thereof and that the Said plaintiff at the like special instance of the Said defendant had then & there undertaken & faithfully promised the Said defendant to deliver the Said Pork hogs to him the Said defendant at the time and at the place aforesaid to the Said defendant undertook and faithfully promised the Said plaintiff to accept of Said pork hogs of & from him the Said plaintiff and to pay him for the Same on the delivery thereof to the Said defendant as aforesaid & although the Said Plaintiff afterwards & upon the first day of January in the Said year of our Lord Eighteen Hundred & forty Eight & after the Making of the Said promise & undertaking of the Said defendant (to wit) on the 23rd day of December in the year of our Lord Eighteen Hundred & forty Seven at the Said Town of Larson at the County of Marshall aforesaid & then & there tendered & offered to deliver the Said Twenty seven pork Hogs to him the Said defendant & then & there requested him the Said defendant to accept the Same and to pay him for the Same as aforesaid yet the Said defendant not regarding his Said promises and undertaking but Contriving craftily & subtilly to deceive & defraud the plaintiff in this behalf did not nor would at the Said time when he was so requested as aforesaid or at any time before or afterwards accept the Said Hogs or any of them of and from the plaintiff or pay him for the Same but then & there wholly neglected & refused so to do And whereas also the Said defendant afterwards to wit on the 23rd day of December in the year of our Lord Eighteen Hundred & forty Seven at the County of Marshall aforesaid was indebted to the plaintiff in the further Sum of fifty Hundred Dollars lawful Money for Pork Hogs then & there sold & delivered to the Said defendant by the Said plaintiff at his special instance and request & being so indebted to the Said defendant in Consideration thereof afterwards to wit

on the day & year aforesaid at the County of Marshall aforesaid undertook and then & there faithfully promised the said Plaintiff to him the said last Mentioned sum of Money when he should be thereunto afterwards requested Nevertheless the said defendant not regarding his said several promises & undertakings but Continuingly & fraudulently intending craftily & subtilly to deceive & to defraud the said Plaintiff in this behalf has not as yet paid the said sums of Money or any part thereof to the said plaintiff although often requested so to do but the said defendant to pay them the said Plaintiff hath hitherto neglected & refused & doth still neglect and refuse to the damage of the plaintiff five Hundred dollars therefore he sues &c

Silas Ramsey Atty for Plff

Cast sued upon

Damage by not Removing the Park	$500.00
Do	$500.00
Do	$500.00
Do	$500.00
To 12500 the Park	$500.00

And said defendant Comes & demurs to each Count in said Declaration and says they are not each of them sufficient in Law for the Plaintiff to Maintain his action aforesaid in that behalf — whereon he prays Judgt &c

Dickey for Defendant

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Jacob Mc Clure
vs
Lemuel A Ball } Assumpsit

Lemuel A. Ball being duly sworn says on oath that Thomas A Ball is a Material witness for affiant in the above entitled Cause & that said witness resides in Butler County in the State of Ohio

Lemuel A. Ball

Subscribed & Sworn to before Me this 12th day of August 1848

John Burns Clerk

State of Illinois Marshall County

Jacob W. Mc Clure
vs
Lemuel A. Ball } L. A. Ball Defendant in this suit being sworn saith that he is acquainted with the Pecuniary Circumstances of said Plaintiff & does not believe to be responsible for the Costs of this suit & he fears he will lose his Costs and the officers of this Court their fees unless security for Costs be filed

L. A. Ball

Subscribed & Sworn to before Me this 31st 1848

John Burns Clerk

Jacob W. Mc Clure
vs
Lemuel A Ball } In Marshall Circuit Court of March Term 1848 Trespass on the Case on promises

Lemuel A. Ball the above Named defendant being sworn saith that Thomas A Ball is a Material witness for him on the said Trial of said Cause without whose evidence he cannot safely proceed to Trial that said Thomas A Ball resides in the County of Butler in the State of Ohio that he expects

to prove by said witness that the said defendant offered to plaintiff four dollars a hundred if he the plaintiff would fatten twenty five hogs to weigh three hundred each that the Conversation occured when the Plaintiff was passing from the mill of the defendant through the defendants door yard with a Bucket of water in his hand when the Plaintiff inquired what defendant would take for his hogs or shoats & demanded that he had a Notion to go to raising Corn & fatting hogs & defendant replied that if he Plaintiff would fatten twenty five hogs to weigh three hundred each he would give him four dollars a hundred & defendant expects to prove by said witness that said Conversation was not regarded or understood by the parties as a Contract Made in good faith but merely as a Loose Conversation Not withstanding the fact which he expects will be proved by said witnesses that the Plaintiff as he passed on Called william Dunn was within hearing to take Notice of what was said Defendant further saith that on the 12th day of August last he Made and filed in the office of the Clerk of said Court an affadavit setting forth that said Thomas A Ball was a Material witness for him in this Cause and that said witness resided in Butler County in the State of Ohio And further that on the 24th of the same Month he procured from the Clerk of said Court a Commission directed to Levi Richmond of Butler County Ohio with interogatories to take the Deposition of said Witness that he procured Notice of his intention to take out said Commission together with a Copy of the Interogatories to be served on Silas Ramsey Esq Counsel for the plaintiff on said 12th day of August last & that said Commission & interogatories were inclosed in a letter directed to said Thomas A Ball at his place of residence & sent into the Post office at Lacon & Postage paid on or about the 26th day of August last with instructions to proceed to have

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the Deposition taken & returned without delay that said Commission has not been returned that he expects to obtain the testimony of said Witness by the next term of this Court

Lemuel A. Ball

Subscribed & sworn to before me
Oct 31st 1848

State of Illinois }
Marshall County } Clerks office Circuit Court

I John Burns Clerk of said Court hereby Certify the Record hereto attached is a true & complete Copy of all the proceedings had in said Court in the Case wherein Jacob W. McClure is Plaintiff and Lemuel A Ball is defendant & that the accompanying papers are all that were filed in said Court in said Cause now pertaining to the trial of said Cause

Witness My hand & Seal of said Court this 30th day of March A.D. 1849

John Burns Clerk

A Record of the orders & Judgment & proceedings of the Honorable Circuit Court of Woodford County begun & held at the Court House in the Town of Metamora on the thursday the 12th day of April A.D. 1849 present the Honorable David Davis Judge of the Eighth Judicial Circuit of the State of Illinois

Friday April 13th

Present as before

Jacob McClure
vs
Lemuel A Ball

In Assumpsit
Change of venue from Marshall County

And now at this day came the parties by their Attorneys and on affidavit of Defendant It is ordered by the Court that this cause be Continued at the Costs of the defendant till the Next Term of this Court & that the Plaintiff have Execution therefor

A Record of the Judgment & Proceedings of the Honorable Circuit Court of Woodford County begun & held at the Court House in the Town of Metamora on Thursday the 27th day of September A.D. 1849 present the Honorable David Davis Judge of the Eight Judicial Circuit of the State of Illinois

Jacob W McClure
vs
Lemuel A. Ball

In assumpsit

And now at this day came the Parties and their Attorneys & put themselves upon the Country whereupon Came a Jury Lowell A Works John W Brim Isaac Snyder Samuel Mundell William McCoy James M Richardson Levi Jones Thos Dixon George C Lemmon Caleb Horn Wm H Armstrong Wm Crusenberry who being sworn well & truly to try the

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the issue joined after hearing the testimony of Witnesses and Argument of Counsel retired to consider on the premises returned into Court & say they find a verdict in favor of Plaintiff for the sum of one Hundred & Seventy three dollars & Fifty four Cents It is therefore considered by the Court that the Plaintiff the aforesaid sum of one Hundred & Seventy three dollars & Fifty four Cents as found aforesaid also his Cost & Charges about his suit in this behalf expended and that he have execution therefor, And Def Made his Motion for an appeal to the Supreme Court which is allowed on his entering into Bond in thirty days with Joseph Morley as Security in a penalty of Five Hundred Dollars which Bond is in the words & figures following Towit

Know all Men by these presents that Lemuel A Ball and Joseph Morley are held & firmly bound unto Jacob W. McClure in the penal sum of five hundred dollars for the payment of which well & truly to be made we bind ourselves our heirs Executors & Administrators jointly severally & firmly by these presents witness our hands and seals this 22d day of October Anno domini one thousand eight hundred & forty seven

The Condition of the above Obligation is such that whereas the above Named Jacob W. McClure did on the 29th day of September A.D. 1849 in the Circuit Court within & for the County of Woodford & State of Illinois recover a Judgment against the above Bounden Lemuel A. Ball for the sum of one hundred & Seventy three dollars & ~~Seventy~~ fifty four Cents and Costs of Suit from which Judgment of said Circuit Court the said Lemuel A Ball has prayed for an ~~appeal~~ & obtained an appeal to the Supreme Court of said State of Illinois — Now if the said Lemuel A. Ball shall duly prosecute his said appeal with effect and shall moreover pay the amount

Costs & interest and damages rendered & to be rendered against him in case the same Judgment shall be affirmed in the same Supreme Court then the above obligation to be Null & void otherwise to remain in full force & virtue

Lemuel A Ball (L.S.)
Joseph Morley (L.S.)

Jacob N McClure
vs
Lemuel A Ball

Woodford Circuit Court
April Term 1849

And the said defendant Comes and defends &c and says he did not undertake and promise in Manner or form as the plaintiff hath above thereof Complained against him and of this he puts himself upon the Country

By Term his Attorney

And Plaintiff doth the Like

Peters & Ramsey

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Jacob W McClure } Woodford Circuit Court of
vs } April Term A.D. 1849
Lemuel A Ball } Assumpsit Damages $500.00

Silas Ramsey being duly sworn deposes & says that he is of Counsel for Plaintiff in the above entitled Cause that some days before the Commencement of the last term of the Circuit Court of Marshall County he had a Conversation with the defendant in regard to the trial of said Cause that he then suggested to said defendant that for the Plaintiff he was willing to have some attorney sent upon the Bench to try the Same & that he then informed said defendant that if there Could not be an agreement he was ready at any time to attend upon any Competant Authority waiving the Same of Notice to have the Deposition of Thomas Ball taken to be read in evidence on the trial of said Cause that on the first day of said Term which was on Monday this affiant again asked said Ball if he would Consent to have said Attorney try said Cause and that said Ball would not Consent to any that were at Lacon trying the Same that this affiant then informed said Ball that he would move the Court to have the venue Changed and that he was still ready to go before any person having authority & waiving the Notice to have the Deposition of said Thomas Ball taken to be read in evidence in the trial of said Cause and that this affiant was in said Lacon all the time until Thursday evening of said Week that the said Thomas Ball was in said Town until Thursday evening when he left upon the Steam Boat Superior and that this affiant was ready at any time to have attended to take the Deposition of said Thomas Ball to be read in evidence as above waiving all Notice that there was in said Town of Lacon from

Complainant Persons upon whom Said Deposition Might have been Taken that the Said Circuit Court of Said Marshall County Adjourned upon Tuesday of Said week and that Said Thomas Ball did not leave until near Sunset of Thursday of Said week that the Said Thomas Ball Came to Said Town of Lacon the last of November or first of December in the year 1848 and that he Remained in Said Town until the time he left for Ohio which was in the Month of March last as Stated Above that this affiant was in Said Town the Most of the Time from the Time Said Ball Came in the fall until he left in the Spring & that the Said defendant knew that he was Counsel for the plaintiff that Said defendant informed this affiant frequently during the winter that his Brother Thomas Ball intended to Return to Ohio on the opening of Navigation in the Spring

Sworn to & Subscribed before me
This 13th April 1849
S. J. Cropp Clerk

Silas Ramsey

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Jacob W. McClure } Woodford Circuit Court
vs } April Term 1849
Lemuel H. Ball }

Hall S. Gregory being duly sworn deposes & says that he resides in Lacon that he is acquainted with Thomas Ball the Brother of said defendant that he did not leave the said Town until Thursday evening of the week on which said Court was held one hour before sunset of said day that the Circuit Court of said County of Marshall Adjourned on Tuesday of said week that the said Thomas Ball came to said Town of Lacon in the early part of the winter of 1848 & 1849 and remained there until after the Adjournment of said Court at the last Term

Hall S. Gregory

Sworn to & subscribed before me this 13th April 1849
S. J. Crofts Clerk

State of Illinois }
Woodford County } S. J. Crofts Clerk of the Circuit Court for said County do certify that the foregoing is a true copy of the record of the Marshall & Woodford Circuit Courts the Judgments Declaration Demurrer appearances & Process with all the papers on file as of Record in my office

In Testimony whereof I have hereunto set my hand & affixed the Seal of said Court at Metamora this 30th day of May A.D. 1850

S. J. Crofts Clerk

Jacob W. McClure } Woodford Circuit Court
vs } on Change of Venue April Term 1849
Lemuel A. Ball } Assumpsit Damages $500

Lemuel A. Ball the above Named defendant being sworn says that Thomas A. Ball is a Material Witness for him on the trial of this Cause without whose Testimony he cannot safely proceed to trial that said Witness resides in the County of Butler in the State of Ohio that he procured the attendance of said Witness at the Marshall Circuit Court at the last term with the expectation that said Cause would then be tried that immediately after the Adjournment of said Court said witness left the said County of Marshall to return to his home in the State of Ohio and he has not been able to procure his testimony for want of time that the Change of Venue was not ordered untile the day of Adjournment of the said Marshall Circuit Court defendant further saith that he expects to prove by said witness that the said Contract Mentioned by the Plaintiff in his declaration was not Meant or intended to be a Bonafide Contract but on the Contrary it was Merely an idle Conversation growing out of the declaration of the Pltff that he was going into the Business of Raising hogs that the offer by the defendant of four dollars a hundred for hogs was limited to hogs of the Plaintiffs own feeding & was understood by the Parties at the time Nothing More than an intimation playfully Made that the Plaintiff would Not be likely to do Much at the business of feeding hogs defendant further saith that the distance from said Woodford County to the residence of said witness by the ordinary Mail Route is about three Hundred & fifty Miles and that the distance from the County Seat of Woodford to that of Marshall County is about

Twenty Miles and said Witness took passage on a Steam Boat lying in port of Lacon in said County of Marshall on the day of the Adjournment of the Circuit Court when said Cause was by an order of said Court transferred to Woodford County

Lemuel H. Ball

Subscribed & Sworn to this 11th day of April 1849 before me the Undersigned Clerk of the Circuit Court for the County of Marshall & State of Illinois

In witness whereof I have hereunto set my hand & affixed the Seal of said Court at Lacon in said County of Marshall on the 11th day of April A D 1849

John Burns Clerk

State of Illinois }
Woodford County } ss

I, S. J. Crop Clerk of the Circuit Court for said County do Certify the foregoing to be a correct copy of all the writs judgments proceeding appearances Recognizances Bond &c &c of the papers filed of the Circuit Courts of Marshall and Woodford Counties now in My office

In Testimony whereof I have hereunto set My hand & affixed the Seal of said Circuit Court at Metamora this 31st day of May A.D. 1855

S. J. Crop Clerk

Clerks fees for this transcript $5.00

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65

Jacob McClure
vs.
Samuel H. Bell
record

judg't. $173.64
8.68 20/5

Filed June 13. 1850.
L. Leland Clk.

State of Illinois, ss.

Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois, to the Sheriff of Marshall County---Greeting:

WE COMMAND YOU, That of the goods and chattels, lands and tenements, and real estate of Lemuel H. Ball

you cause to be made the sum of eight dollars and sixty eight cents damages, and the sum of Eleven dollars and twenty cents costs in the said Supreme Court, which Jacob McClure

lately recovered against him before the Justices of our said Supreme Court, as appears to us of record, and make return hereof in ninety days.

WITNESS, the Hon. Samuel H. Treat, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 7th day of September in the year of our Lord one thousand eight hundred and fifty.

S. Leland *Clerk of the Supreme Court.*

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Come to hand on the 9th day of September at 10 O'clock Am AD 1850
Money made in full, paid over to John Burns, full amount of the within
principle Damages as per receipt on this writ also four dollars & 94 cents
the same being fees paid you by O Petrus esq for wich I have receipt
and I have the balance ready to pay over to the respective claimants
Returned December 23d 1850

Service 50
Recommonds 30
Return 10
190

Henry L Crane Sheriff of McD Ill

Samuel A. Ball
v
Jacob McClure
Execution vs R/P.
Damages $8.68
Bill of costs 11.20
Amt. $19.88
Collect interest from
Jan 13. 1850.

Received of Cyrus Shurtleff
Marshall & H. Bancroft
in the case of S. A. Ball vs
J. McClure the sum of
Dec 24th 1850 Thirty
Dollars