

8607

No. _____

Supreme Court of Illinois

James Warren

vs.

John McCarty et al

71641  7

1810-11

36

James M. Warren

vs

Whites admistr

Exor to Williamson

Filed Nov. 14, 1860

N. Johnston Clk

paid \$5.00

State of Illinois }
Williamson County } Williamson Circuit
Court A D 1860

Pleas before the Honorable William J Allen
Judge of the 26th Judicial Circuit in the
State of Illinois and presiding Judge of
the Circuit Court of the County of Williamson
in the State aforesaid on the day thirtieth
of March in the year of our Lord One Thou-
sand Eight Hundred and Sixty

Be it
Remembered that heretofore to wit: on the 23^d
day of August A D 1858. the following
proceedings were had and entered of record in
said Court to wit:

State of Illinois }
Harrison County } ss

The People of the State
of Illinois To the Sheriff of said County Gree-
ting We Command you to summon James M-
Warren if to be found in your County personally
to be and appear before the Circuit Court of said
County on the first day of the next Term thereof
to be commenced and holden at the Court House
in Elizabethtown on the first Monday of
October next to answer John M^c Cartney and

Virginia White² Administrators of Peyton
White in a plea of Debt = \$1503.96
to their Damage of = 1500.00
as is alledged and hereof make due return
to our said ~~Law~~ Court as the law directs

In Testimony whereof I
James M^c Furlow have
hereunto set my hand and
affixed the official seal
of said Court at office
in Elizabethtown the
23^d day of August
A D 1858



James M^c Furlow clerk

Shriffs
Return

Returned served by acknowledgement of
service by the within named defendant on the
3^d day of September 1858

J. John W. Raeph
2 Sheriff, H. C. Illinois

State of Illinois³ of the October Term of the
Declaration Hardin County³ 3^{5c} Hardin Circuit Court - 1858

John Mc Conthey and Virginia White the Plaintiffs in this suit - Administrators of all and singular the goods and chattles rights and effects which were of Payton White deceased at the time of his death, by Percy & Smith their Atty's complain of James M Warren the Defendant in this suit who has been summoned &c. of a plea that he render to them the sum of Fifteen hundred and three Dollars and ninty six cents (\$1503.96) together with Interest thereon from the first day of December A D 1845 until paid which he unjustly detains from them

For that whereas heretofore to wit on the 26th day of October A D 1853 at a Term of Court then held at the County of Marion and State of Kentucky a certain Decree was rendered made and pronounced in and by the Honorable Alvin Dwoall Judge of the Marion Circuit Court at the City of Maypsice and State of Kentucky, that is to say at the County of Hardin and State of Illinois in and concerning a certain suit therein depending in the same Court at the instance of Payton White against the said Defendant and others, whereby the aforesaid Judge of the said Marion County

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Circuit Court State of Kentucky did then and there Decree and ordain the said Defendant James M Warren, to make payment to the said Payton White as aforesaid of a certain sum of Money to wit

The sum of Fifteen hundred and three dollars and sixty six cents (\$1503.96) together with interest on the same from the first day of December A D 1845 until paid which said decree remains in full force and effect and wholly unsatisfied whereby the said Defendant became liable to pay to the said Payton White in his life time and to the said Plaintiffs administrators as aforesaid since the death of the said Payton White the aforesaid sum of money above demanded and so decreed to be paid as aforesaid together with such Interest as aforesaid on the said sum of \$1503.96 according to the said Decree which said Decree still remains in full force and effect not reversed satisfied or otherwise vacated, and then the said Payton White in his life time nor the said Plaintiffs administrators as aforesaid did not or have not obtained any satisfaction of or upon the said Decree rendered as aforesaid. Whereby an action hath accrued to the said Plaintiffs administrators as aforesaid to demand and have of and from the said Defendant

The said sum of \$1503 ⁹⁶/₁₀₀ above demanded
together with Interest as aforesaid

Yet the said
Defendant although often requested so to do
hath not as yet paid the said sum of \$1503 ⁹⁶/₁₀₀
above demanded together with interest as aforesaid
or any part or parcel thereof to the said Payton-
White in his lifetime nor to the said Plaintiffs
since the decease of the said Payton White to which
said Plaintiffs after the death of the said Pay-
ton White to wit on ^{the} Eleventh day of September
A D 1854 at the County of Mason and State
of Kentucky aforesaid that is to say at the
County of Hardin and State of Illinois aforesaid.
Administration of all and singular the
goods and chattels rights and effects which
were of the said Payton White deceased at the
time of his death who died intestate, by the
County Court of Mason County and State
of Kentucky in due form of Law was granted
But the said Defendant so to do hath hit-
herto wholly refused and still doth refuse to
pay the same or any part thereof to the said Plain-
tiffs Administrators as aforesaid to the dam-
age of the said Plaintiffs Administrators
as aforesaid of Fifteen Hundred Dollars
and therefore they bring this suit &c.

And the said Plaintiffs

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Bring into Court here the letters of administration aforesaid, which give to the Court here sufficient evidence of the grant of administration to the said Plaintiffs as aforesaid. The date whereof is a certain day and year therein mentioned to wit the day and year in that behalf above mentioned.

Pacey & Smith
attys for Plffs

Declaration

filed

Filed in my office Sept 1st 1858

James McFarlan

Clerk

State of Kentucky }
Mason County Court } set September 11th 1854
On motion of John McCarthey and Virginia White it is ordered that Administration upon the goods, chattels, rights and effects of Peyton White deceased be granted unto them. Whereupon the said John McCarthey and Virginia White took the oath prescribed by law and with Peyton J Key and Jeremiah C Wheeler as their securities entered into an acknowledged bond to the Commonwealth of Kentucky conditioned according to law. It is therefore ordered that Certificate of Administration

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Be and the same is hereby granted them in due form

Attest Robt A Cochran
Clerk in Co et

State of Kentucky 3
Mason County 3 Sec

I Robert A Cochran
Clerk of the County Court in and for the
County and State aforesaid do hereby certify
that the foregoing is a true & complete copy of the
order of said Court granting administration
upon the estate of Payton White Deceased that
the same is in conformity with the laws of said
State and that said Court is a Court of
Record having Probate Jurisdiction &c.



In testimony whereof I have hereunto
set my hand and affixed the seal of
said Court Done at office in the
City of Mayesville, April 7th 1857

Robt A Cochran Clerk

State of Kentucky Mason County set
I Emory Whitaker Presiding Judge of the
County Court in and for the County and State
aforesaid certify that Robert A Cochran is
the Clerk of said Court and that his attestation
foregoing is in due form Given under my hand
& seal this 7th April 1857

Emory Whitaker, P. J. M. C. C.

Filed Oct 5th 1858 Jas. McFarlan Secy

John M^c Carthy & 8
Virginia White adm^s } Hardin County
of Dayton White dec } Circuit Court
3 October Term

vs
James M. Warren

1859

Thomas H. Smith attorney for the
Plaintiff in the above entitled cause will take
notice, that I will shall at the meeting of
the Court on the morning of the 3^d day of the
said present Term of said Circuit Court or
as soon thereafter as same can be heard apply
to said Court for a change of venue in the
above cause, when and where you may atten-
-d if you think proper

3th Oct 1859

Yours &c.
Jas M Warren

Filed October 5th 1859
Jas M Harlan CLK

John M^c Carthy & 3
Virginia White adm^s } In the Hardin
of Dayton White dec } Circuit Court
3 October Term
vs } A D 1859
James M Warren }

To the Honorable Judge of
the Hardin County Circuit Court

In the State of Illinois

Your Petitioner James M Warren
the Defendant in the above entitled ~~suit~~-cause
States that he fears that he will not receive a
fair trial in said cause in this court on acco-
unt that the Honorable Wesley Sloan Judge
of said Court is prejudiced against him

He further states that the above facts has
come to his knowledge within less than ten
days previous to the date hereof and prays
that the Venue in this cause may be changed
to some other Circuit and as in duty bound
will ever pray &c

James M. Warren

Subscribed and sworn to
before me 5th day of
October A D 1859

James M Farlan CLK

Filed Oct 5th 1859, James M Farlan CLK

State of Illinois
Hardin County

Hardin Circuit Court } Set
Pleas at the Court House in the town of
Elizabethtown Hardin County State of Illinois
Before the Honorable Wesley Sloan Judge

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James M Warren } Defendant

Now on this day come again the said Plaintiffs by Smith their attorney as well also the said Defendant by Ramm his attorney who filed five pleas in said Cause and the said Plaintiffs by their Attorneys filed their Demurer to the 1st 2nd 4th pleas which Demurer was sustained by the Court to the 1st 4th & 5th and overruled as to the 2nd plea

And afterwards to wit on the 8th day of October 1858 the following Order was had in said Cause to wit;

John M & Conthey and	9	Plaintiffs
Virginia White Administrators	2	
of the Estate of Peyton White	2	Debts \$505. ⁴⁶ / ₁₀₀
Deceased	2	Damages 1500.00
vs	3	
James M Warren	3	Defendant

Now on this day come again the said Plaintiff by Smith their attorney as well also the said Defendant by Ramm his Attorney and asked leave to file three additional pleas and the Plaintiff moved to strike out said three additional pleas from the files which motion was overruled by the Court and the plaintiffs to said overruling Excepto & c.

And afterwards to wit on the 25th day of

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May 1859 the following Order was had in
said Cause to wit;

John Mc Carthy and Virginia White admin ^s of the Estate of Payton White Deceased	}	Plaintiffs Debt \$1503 ⁴⁶ / ₁₀₀ Dam \$1500
vs	}	Transcript of records
James M Warren	}	Defendant

Now on this day came
the said Plaintiffs by Green and Smith their attorneys
as well also the said Defendant by G B Green
his attorney and the said Plaintiffs demurred to
the Pleas filed in this Cause as to the 1st 4th 5th 6th
7th 8th 10th 11th 12th & 13th pleas which was sustai-
ned as to the 6th 8th 10th & 11th pleas and leave to the
Plaintiffs to withdrawon demurrees overruled

And afterwards to wit on the 28th day of May
1859 the following Order was had in said Cause
to wit-

John Mc Carthy and Virginia White admin ^s of the Estate of Payton White Deceased	}	Plaintiffs Transcript from Records Debt \$1503 ⁴⁶ / ₁₀₀
vs	}	Dam \$ 15.00
James M Warren	}	Defendant

Now on this day came
again the said Plaintiffs by Green & Smith
their attorneys as well also the said defendant

By Rumm his Attorney Demures to the Replication
 to 5th & 10th & 11th pleas overruled as to the 8th 10th 11th pleas
 Sustained as to Replication to 5th plea and leave to amend
 same and leave joined let a Jury come thereupon came
 a Jury to wit Eli M^c Dowell, Elijah Mason 2
 John Leadbetter 3 Riley Literal 4 Jackson Morn
 5 Connee Ashford 6 James Shoemaker 7 Willia-
 m Groves 8 Phillip Baker 9 Alex Robbs 10
 Daniel Davis 11 John W Bunklem 12 who being
 chosen selected and sworn upon their oaths do say we
 the Jury find for the Plaintiff Fifteen Hundred
 and three Dollars and ninty six cents \$ 1503⁹⁶/₁₀₀
 when the defendant motioned for a new trial and
 arrest of Judgement & c.

And afterwards to wit: on the 30th day of May 1859
 the following Order was made in said cause to wit
 John M^c Cauthey and 3 Plaintiffs
 Virginia White adm^r 3 Debt \$ 1503⁹⁶/₁₀₀
 of the Estate of Peyton 3 Damages, 15,00,00
 White Deceased 3
 vs
 James M White 3 Defendant

Now on this day came again the
 said Plaintiffs by Smith & Green their Attorneys
 as well also the said Defendant by Rumm his
 Attorney when the motion for new Trial and arrest
 of Judgement is sustained and the Defendant have
 leave to withdraw his pleas and file amended pleas

and this cause is continued & c.

Afterwards to wit
 on the 7th day of October 1859 the following order was
 had in said Cause to wit -

John M ^c Courtney and	}	Plaintiffs
Virginia White adms		Debt \$ 1503 ⁹⁶ / ₁₀₀
of the Estate of Payton		Damages \$ 500.00
White Deceased		
vs		
James M Warren	}	Defendant

" Now on this day came again the said Plaintiffs by Green & Smith their attorneys as well also the said Defendant by Rumm his attorney and makes his motion for a change of venue in this cause from this Circuit and the same being submitted to the Court wherefore it is ordered by the Court that the venue in this cause be and the same is changed to the County of Williamson & c.

State of Illinois }
 Hardin County } I James M^c Farlan Clerk
 of the Circuit Court within and

for said County do certify that the foregoing is a correct Record of the proceedings had in the Circuit Court of said County in the foregoing styled Cause as appears of record in this office and that the accompanying papers marked A B C D E F is all the papers on file pertaining to said suit: In testimony whereof I have hereunto set my hand and affixed the Judicial thereof at Elizabethton the 24th day of Feb'y A. D. 1860



James M^c Farlan Clerk. cc-cc

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October Term Hardin et al 1858

John M^c Carthy and Virginia White Adms of the Estate of Peyton White Deceased

Plaintiffs

Debt

vs

James M Warren

Defendant

Clks fees

File Records 5	File receipts 5	File Bills 5	15	
Summ ³⁵	Cast bond ¹⁵	fil ⁴	Pleas ²⁰	70
File 15	Demure ⁷⁵	cont ²⁰	aff alleo Dept ¹⁰	125
Cast Bill & Docks ³⁰	Copy ²⁰	cit & Seal ³⁵	85	
			\$2.95	

May Term Hardin et al 1859

Clks fees

Docks ¹⁰	Order ²⁰	et Order ²⁰	et	50
File Recs 6 ³⁰	fil ³⁰	bill & Docks ³⁰		60
Copy ²⁰	cer & Seal ³⁵			55
			\$4.60	

October Term Hardin et al 1859

Clks fees

Docks Sui ¹⁰	filings 8/papers ⁴⁰		
Entering 2 Orders for contin ⁴⁰			70
Swearing to 5 affidavits			5
Issue Exc & Docket ⁴⁰			40
Entering satisfaction of Judg ¹⁵			15
Making bill of Costs and Copy of Same ⁵⁰			50
Cit & Seal			35
			\$6.95

Making record 5 pages 40 cts per page^{2.00} Cer & Seal³⁵ 2.35

\$9.30

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State of Illinois }
Kardian County } f.

I James M^cFarlan
Clerk of the Circuit Court within and
for said County Certify that the foregoing
Page contains A full Transcript of the fees
Adjudged to the defendant in the Case of
John M^cCarthy, And Virginia White
Administrators of the Estate of Payton -
White Dec^d Against James M Warren



In witness whereof I have hereunto
set my hand and seal official
the Judicial seal of said
Court at Elizabethtown
The 8th day of February A D
1860 Jas M^cFarlan Clerk

Filed March 5th 1860

G. W. Goddard clk

Ct. Clk. W. C. In

1, 2, 3, 4
3216 + 4
Pleas

State of Illinois }
Williamson County } Res.

Of the March Term of
the Circuit Court of
Williamson County 1860
John M^cCarthy and
Virginia White Adms

1 Plea of the Estate of Payton
White deceased.
James M^cWarren

And the said defendant by **Ramm** his Attorney Comes and defends the wrong and injury when & C., and says that there is not any record of the said supposed recovery in the said Plaintiffs Declaration mentioned remaining in the said Main Circuit Court in the said State of Kentucky in manner and form as the said Plaintiffs hath above in their said Declaration alleged and the said Defendant is ready to verify

Wherefore he prays Judgement if the said Plaintiffs ought to hear or maintain their above said action thereof against the said Defendant & C.

Jas. M. Warren

Travis & Isene

Green & Smith

Atty's for Plffs

2^d Page

And ^{for} further plea in this behalf the said defendant by leave of the Court first had according to the form of the statute & C., Comes and defends the wrong and injury when & C., and says that he does not owe the said sum of money above demanded or any part thereof in manner and form as the said plaintiffs hath above thereof complained against him And the said Defendant further avers and shows to the Court that the said

Circuit Court of Mason County in the State of Kentucky at the October Term thereof 1853 had no Jurisdiction of the person of this Defendant nor of the said supposed Cause of action nor had said Court any right, power, authority and Jurisdiction to render the said supposed decree in that behalf became, ^{he says} theretofore to wit, at the November Term of said Court 1846. A final decree was entered by due consideration of said Court upon the same identical Cause of action between the said parties upon due service of notice ⁱⁿ and proofs. Wherefore the powers and Jurisdiction of said Court in the same Cause between the said parties became and were fructus officii. And said defendant further avers and shows that after the rendition of said final decree in November 1846,

Defendant has been and still is a resident of the State of Illinois, and has never been in the State of Kentucky and no notice actual or constructive has ever since been given to nor service of process had upon said defendant in said cause nor has this defendant ever entered his appearance in said cause nor has he ever authorized any attorney or other person to enter his appearance therein or to plead answer or demurr, nor to take any steps action, or proceedings therein nor has he, this Defendant ever consented thereto directly or indirectly in any way or manner however.

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And so this Defendant says that the said supposed decree of the said Circuit Court of Mason County in the Commonwealth of Kentucky rendered at the October Term thereof 1853 was, and is null and void, being rendered without Jurisdiction. And this said Defendant is ready to verify. Wherefore he prays Judgement if the said plaintiffs ought to have or maintain his aforesaid action thereof against him & C.

Jas. M. Warren

3th Pleas

And the said Defendant for further plea in this behalf by leave & C. Comes and defends the wrong and injury when & C. And says that the said plaintiffs ought not to hear and maintain their aforesaid action against him because he says that the said Payton White (now deceased) in his life time by his bill in Chancery impleaded the said Defendant in the Circuit Court of Mason County in the State of Kentucky for the same identical cause of action on which said supposed Decree was rendered and caused defendant to be duly served with process therein to which said Bill this defendant appeared and put in an answer and the said Payton White filed his replication thereto and issue being

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Joined thereon said Parties proceeded to take proofs and a Master in Chancery of said Court made his report upon reference being made to him. and such proceedings were had. that afterwards at the November Term of said Court 1846 by the consideration of said Court the said Plaintiff White recovered of the said Defendant the sum of Eleven Hundred and Eighty two Dollars and ninety six cents and execution was awarded thereon and the said defendant avers that said decree was final and conclusive between the parties and the same still remains in full force and in no wise amended. reversed or set aside and Defendant further avers. that upon the rendition of said decree the powers and Jurisdiction of said Circuit Court of Mason County became and were functus officio in by and under the laws of the State of Kentucky as to the said cause of action and the said parties in that behalf and the said defendant further avers that ~~ever~~ he has ever since the rendition of said decree been a citizen and resident of the State of Illinois. and has ever since been in the State of Kentucky. Defendant further avers that no writ or process whatsoever whereon said

Defendant could have been summoned
 or notified either actually or constructively
 of any other or further proceedings in said cause
 has ever since been issued or served upon said
 Defendant nor has he ever had any such
 notice, ^{actual} or constructive of such intended proceed-
 -ing Defendant further avers, that he never
 entered his appearance nor consented either
 in person ~~or~~ nor by attorney, nor authorized
 any attorney or other person to enter his app-
 -earance or consent by Plea Demurrer, answer
 or otherwise to any other or further or subsequent
 proceedings or further decree in said cause
 at said October Term of said Court 1853
 or other Term whatsoever and so the defen-
 -dant avers that said supposed decree for
 the sum of \$1503.96 supposed to be rendered
 at said October Term of said Court 1853
 was not rendered by said Court by virtue
 of any statutory law of the State of Kentucky
 or by virtue of the practice and proceedings of Cour-
 -ts of Chancery adopted in the State of Ken-
 -tucky, or by virtue of any other law or practice
 in the State of Kentucky whatsoever wherefrom
 Defendant avers that said supposed decree
 rendered at said October Term of said Court
 1853 for the sum of \$ - - aforesaid is
 and was at the Term of the rendition thereof

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according to the laws of the State of Kentucky
anomalous null and void for the causes aforesaid
and this he is ready to verify. Wherefore
he prays Judgement if the said Plaintiffs
shall have or maintain their action aforesaid
against him & C.

4th Plea

And the said Defendant
for further plea in this behalf by leave & c.
Comes and defends the wrong and injury
when & C. and says that the said plaintiffs
ought not to have and maintain their aforesaid
action against him because he says that
the said Payton White (now deceased) in his
lifetime by his Bill in chancery impleaded
the said Defendant in the Circuit Court of
Mason County in the State of Kentucky for
the same identical ~~purpose~~ cause of action in
which said supposed decree was rendered
and caused said defendant to be duly
served with process therein to which said
Bill this defendant appeared and put in
an answer and the said Payton White filed
his replication thereto and issue being joined
thereon said parties proceeded to take proofs
and a Master in Chancery of said Court
made his report upon reference being made
to him, and such proceedings were had that
afterwards at the November Term of said

Court 1846 by the consideration of said
 Court the said Peyton White recognized of
 the said Defendant the sum of Eleven
 Hundred and Eighty Two Dollars and ninety
 six cents. and an execution was awarded
 thereon. and the said Defendant avers that
 the said decree according to the laws of the
 State of Kentucky was final and conclus-
 -ive between the parties, and the same still
 remains in full force and ^mno wise annulled
 reversed or set aside and defendant further
 avers that upon the rendition of said decree
 according to the laws of the State of Ken-
 tucky, the power and jurisdiction of said
 Mason Circuit Court State of Kentucky
 became and was functus officio in by and un-
 der the laws of the State of Kentucky a fore-
 -and as to the said cause of action and the said
 parties in that behalf and the said Defendant
 further avers, that he has ever since the rendi-
 -tion of said decree been a citizen and resi-
 -dent of the State of Illinois, and has never
 since been in the State of Kentucky Defen-
 -dant further, avers that no writ or process
 whatever whereon said Defendant could
 have been summoned or notified either
 actually or constructively of any other or fut-
 -her proceedings in said Cause has ever since

been issued or served upon said defendant
 nor has he ever had any such notice actual
 or constructive of such intended proceedings
 said defendant further avers that he ~~was~~
 entered his appearance nor consented either
 in person, nor by attorney nor authorized any
 attorney or other person to enter his appearance
 or consent by plea Demurrer. Answer or auth-
 orized to any other further or subsequent proce-
 edings or further decree in said cause at said
 October Term of said Mason Circuit Court
 1853 or other term whatsoever. And so this
 Defendant avers that the said supposed
 decree for the sum of \$1503.96 supposed to
 be rendered at said October Term of said
 Mason Circuit Court 1853 was rendered
 by said Court in the same identical cause
 of action as that rendered by said Court at
 the November Term thereof 1846 for \$1182.96
 Wherefore the Defendant further avers
 that according to the laws of the State of
 Kentucky a decree which is final at
 one Term of the Court and a subsequent
 decree at another Term in the same cause is
 anomalous and void wherefore defendant
 avers that said decree rendered by the
 Circuit Court of Mason County State
 of Kentucky at its October Term thereof

1853 for \$1503.96 and the same supposed decree in said Plaintiffs declaration mentioned was rendered by said Court without jurisdiction of said cause or over the person of this defendant. And is absolutely null and void for the causes aforesaid, and this the said defendant is ready to verify wherefore &c.

5th Plea

And the said defendant for further plea in this behalf by leave &c. Comes and defends the wrong and injury When &c. And says that the said Plaintiffs ought not to have and maintain their aforesaid action against him, because he says that the said Peyton White (now deceased) in his life time by his bill in chancery impleaded the said Defendant in the Circuit Court of Mason County in the State of Kentucky for the ~~same~~ identical cause of action on which said subpoena decree was rendered and caused said defendant to be duly served with process therein to which said Bill this defendant appeared and put in an answer and the said Peyton White filed his replication thereto and issue being joined thereon said parties proceeded to take ^{proofs} and a Master in Chancery of said Court made his report upon reference being made

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To him and such proceedings were had, that afterwards at the November term of said Court, 1840, by the consideration of said Court the said Peyton White recovered of the said Defendant the sum of Eleven Hundred and Eighty two Dollars and ninty six cents, and execution was awarded thereon, and the said defendant avers that said Decree was final and conclusive between the parties, and the same still remains in full force and ~~virtue~~ and in no wise annulled, reversed or set aside and ~~said~~ defendant further avers, that upon the rendition of said decree the powers and Jurisdiction of said Circuit Court of Mason County became and were functus officio in ^{and} by ~~virtue~~ under the Laws of the State of Kentucky as to the said cause of action and the said parties in that behalf and the said defendant further avers that he has ever since the rendition of said decree been a citizen and resident of the State of Illinois, and has never since been in the State of Kentucky, Defendant further avers that no writ or process whatsoever whereon said defendant could have been summoned or notified either actually or constructively of any other or further proceedings in said cause has ever since been issued or served upon said defendant nor has he ever had any such

Notice Actual or Constructive of such intended proceedings. said defendant further avers that he never entered his appearance nor consented either in person nor by attorney nor authorized any attorney or other person to enter his appearance or consent by plea

Demurrer. Answer or otherwise to any other further or subsequent proceedings or further decree in said cause at the said October Term of said Court 1853 or other Term whatsoever and so this defendant avers that the said supposed decree for the sum of \$1503.96 supposed to be rendered at said October Term of said Court 1853 was rendered by said Court without Jurisdiction of the said cause or over the person of this defendant and is absolutely null and void for the causes aforesaid and this he is ready to verify wherefore he prays Judgment if the said plaintiffs shall have or maintain their action aforesaid against him &c.

6th Dec

And the said defendant for further plea in this behalf says actio non because he says that the said plaintiffs were not at the time of the commencement of the said ~~actio~~ plaintiffs action against the said defendant - Administrators of the Estate of Payson White deceased and this the said defendant is ready - verify wherefore &c.

Traveler & issue

Green & Smith
Atty's for PlffsFiled March 21st 1860

G. W. Goodard

CaseWarren vs Mc Carthy

7 Plea

And the said defendant for a further plea in this behalf says actio non. Because he says that the said Peyton White now deceased in his lifetime filed his bill in Chancery in the said Mason Circuit Court - State of Kentucky against said defendant and caused said defendant to be served with process therein to which said Bill this defendant appeared and put in an answer and the said Peyton White filed his replication thereto, and that an issue was joined in said cause and that the parties took and filed their proofs in said cause and that said cause was referred to a Master Commissioner who made his report on said cause to said Court. and that said cause came on to be heard upon all the proceedings had therein at the November Term 1846 of said Court said cause having been submitted to the Court at the

Previous Term thereof And that upon the hearing
 of said cause by the consideration of said Court
 the said Payton White recovered of the said
 defendant the sum of \$ 1182.96 and execution
 was awarded thereon and a Commissioner appo-
 -inted to execute said decree. And said def-
 -endant avers that at the time of the rendition of
 said decree at the November Term 1846 of said
 Court it was & ever since that time has been
 the law of the said State of Kentucky that a
 decree of a Court of Chancery which ascertains
 the Complainant's demand and which renders
 a judgement therefor and awards an executi-
 -on thereon is a final ^{decree} and directory only as
 the execution of the decree. and that such final
 decree cannot be opened altered or reversed
 after the expiration of the term at which it was
 rendered unless upon bill of review or bill in
 the nature of a Bill of review or bill or petition
 impeaching the decree for fraud and that wh-
 -ere at one term of the Court a final decree is
 entered and that Term of the Court expires with-
 -out further order opening ~~altering~~ or reversing
 such decree and at a subsequent term of the
 Court without any appearance of the parties
 another decree is entered in the same cause
 it is irregular and void

And said Defendant avers

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that said decree is ³⁰remained at said Novem-
ber Term 1846 of the said Mason Circuit Court
of the State of Kentucky according to the
said laws of the State of Kentucky was
final and conclusive between the parties. That
said November Term of said Court expired
without any order being entered in said cause
by said Court opening altering or reversing
such decree and that the same ^{shall} ~~shall~~ remain
in full force and that no Bill of review Bill
or petition impeaching said decree for fraud or
any other cause has been filed in said Court
to open ~~alter~~ or reverse said decree and that said
decree has never been reversed set aside or in
anywise annulled

And said defendant further
avows that at the October Term 1853 of said
Court in the same identical cause in which
said final decree was entered at the Novem-
ber Term 1846 of said Court without any
appearance of the parties in said cause said
Mason Circuit Court entered up an other
decree in said cause which is the said sup-
posed decree in Plaintiffs declaration men-
tioned and said Defendant avows that
no writ or process whatever whereon said
Defendant could have been summoned or
notified either actually or constructively of

My other proceedings in said cause since the rendition of said first decree at the November Term 1846 of said Court has ever been issued or served upon said defendant. And that he did not by himself Attorney or otherwise plead answer or demurr or by any other means enter his appearance in said Mason Circuit Court in said last mentioned proceeding by said Court had at said October Term 1853 And that said last mentioned decree was rendered without the knowledge or consent of said defendant

And so said defendant avers that said last mentioned decree so entered in said cause at the October Term 1853 of said Court according to the laws of the State of Kentucky aforesaid for the causes aforesaid is and was ~~and~~ absolutely null and void

Wherefore &c.

Prayer for Defendant

Filed March 21st 1860
 G. W. Goddard Clerk

M^c Cartney Etal

vs

Warren

3
3
3
3

Debt

And the said Debts
 By Green & Smith his Attor-
 nis comes & defend the

Comer
 to Pleas

32

Wrong injury when & C. & says the said pleas
of the said Defendant above pleaded to wit
the 1st 2nd 3rd 4th 5th 6th & 7th pleas are not
sufficient in law as a defence to the said Dec-
laration in manner and form as said pleas are
pleaded & this they are ready to verify wherefore
Green & Smith

And for special causes of Demurrer to the said
- d pleas the said Plffs show the following -

The 1st plea concludes with a verification

The 2nd plea in the plea of nil debil & impeaches
the 2nd record. & is double

The 3rd 4th & 5th pleas are repugnant & attempt to
impeach the 2^d record & are double

The 7th attempts to impeach the record & aims to
get issue & States mater of law & is double

John Mc Carthy and 3

Virginia White 3

Rep to 1st
plea

vs 3
James M Warren 3 Replication 1st plea

3 And the said Plaintiffs

3 By Green & Smith their attys

as to the said plea by the said Defendant first above
pleaded say precludi non because they say that
there is such Record of the said recovery in the said
Plaintiffs Declaration mentioned remaining

in the said Mason Circuit Court in the said State of Kentucky as the said Plaintiffs hath above in their said Declaration in that behalf alleged. and this the said Plaintiffs are ready to verify by the said record when when in such manner as this Honorable Court here shall direct wherefore &c.

Green & Smith
Atty's for Plffs

Travers & Lane
Rum for Deft

Filed March 24th 1860

McCahey & White Admrs
vs
James M. Warren

G. W. Goodson clerks

And the said
Plaintiffs

Rep No 1
to 4th place

Say that the said Defendant ought not to be admitted or received to plead the said plea by him fourthly above pleaded. as to so much thereof, wherein he alleges that the said Circuit Court of Mason County in the said suit of Payton White vs the said Defendant had not Jurisdiction of the person of him the said Defendant either by Entry of his appearance or in any wise whatsoever: Because they say that at the October Term of of the said Mason Circuit Court 1853 final Judgement was

35.

Doth the Wm Green & Smith
Ramm for Deft 3 Atty's for Plffs

Filed March the 24th 1860

G W Goodard

CLERK

Rep to John M^c Lanthier and
Virginia White Adm^r & c
vs
James M Warren
Replication
to 6th Plea

And the said Plaintiffs
by Green & Smith their Atty^s as to the said plea
by the said Defendant Sixthly above pleaded
say precludi non because they say that they the
said Plaintiffs were at the time of the commen-
cement of said suit and still are the adminis-
trators of the Estate of the said Peyton White
duly appointed & qualified and thus the said
Plaintiffs pray may be inquired of by the Country
Wherefore & c.

Green & Smith
Atty's for Plffs

Doth the Wm
Ramm for Deft

Filed March 24th 1860

G W Goodard

CLERK

Mc Cauley Et al ³⁶

Warren

And the said
Plaintiffs say that
the said Defendant
ought not to be received
or admitted to plead the

Ref No 1
to 7th plea

said plea by him seventh by him above pleaded
as to so much thereof. wherein he alleges that no writ
or process has ever been issued in the said suit of
Payton ~~White~~ White vs James M Warren in the
said Mann Circuit Court whereas said Jas -
M Warren could have been summoned &c. and
that he the said Defendant did not plead answer
or demurrer or by any other means enter his app-
earance in said suit in said Mann Circuit
Court because they say that it appears by the
record of said suit that said Defendant was
summoned to answer in said suit in said Mann
Circuit Court & did appear and answer therein
and that therein final Judgement was entered
against him the said Defendant. And this
the said Plaintiffs are ready to verify by
the record: Wherefore they pray Judgement
whether the said Defendant ought to be adm-
itted or received to plead his said seventh
plea against the said record &c.

Traverse & issue

Green & Smith
Attas for Plaintiffs

Remun for Deft

Filed March the 24 1860

G W Grodona
clerk

Mc Carthy Et al

Rep No 2
to 7th plea

vs
Warren

3
3
3

And the said Plaintiffs. By leave of the Court first had for further replication to the said plea of the said Defendant by him severally above pleaded. any preclusion because they say. the said decree of of the said Mason Circuit Court. rendered at the October Term thereof A D. 1853. in the said suit of Peyton White vs James M Warren. was rendered after. in pursuance of and with jurisdiction of said James M Warren had & obtained by personal service had upon the said James M Warren by summons issued from said Mason Circuit Court in said suit of Peyton White vs James M Warren. and by the appearance of James M Warren in said suit And this the said Plaintiffs pray may be inquired of by the Country &c.

Doth the unders

Remain for Deft

Green & Smith
Attys for Plffs

Order John Mc Carthy and
No one Virginia White Adms. of
the Estate of Peyton White Decd
vs
James M Warren

3
3
3
3
3

Debt

At this day
came the said Plaintiffs by Green & Smith

Their Atty^o and also the Defendant by Ramm his Atty and the said Defendant filed seven pleas in said Cause to which the said Plffs severally Demurred and the Court upon hearing the argument of Atty^o sustains the Demurs as to the 2nd 3rd & 5th pleas overrules as to the 1st 4th 6th & 7th whereupon the said Plaintiffs withdrew their Demurrs as to the said 1st 4th 6th & 7th pleas

And afterwards to wit on ~~beant~~ 5th day of said Term the following order and proceedings were had and entered of record in said Cause to wit -

Oran
No 2

John McCuthey and	3	
Virginia White Adm ^r	3	
of the Estate of Payton =	3	Debt -
White Deceased	3	

James M Warren Now on this day
Came again the said Plffs by Green & Smith their Atty^o and the said Defendant by Ramm his Atty and the said Plaintiffs files their replication No 1 to 1st & replication No 1 & 2 to 4th plea & Replication No 1 & 2 to 7th and the said Defendant moves to strike Replication No 3 to 7th ^{Pleas} & 4th from files which said motion is sustained is sustained & leave is

Given to refill some & leave is also given
 Plaintiffs to ^{file} a second Replication to 4th Plea

Mc Cauley Etal }
 vs } Debt
 J M Warrers }

At this day came
 again the said Plaintiffs by Green & Smith
 their Attorneys and also the said Defendant
 in his proper person and also by Ramm his
 Attorney and Jarne by Jined let a Jury
 Come whereupon came a Jury to wit Charles
 Sturvell Franklin Brown W L Good and
 James Roberts W. P. Spingo H L Hays
 J G Newton Kenny Newton & Benj W
 Selley Thomas Owens G Doty Thomas
 Reed twelve good and law full men of
 the County who being elected tried and sworn
 well and true to try the Issue joined upon their
 oaths do say we the Jury find the issue for the
 Plaintiffs and fix the debt at one thousand
 five hundred and three Dollars and ninty six
 cents and a pers. their damages at twelve
 hundred and Eighty five Dollars and 77cts
 Making two thousand Seven hundred and Eig-
 hty nine dollars and 73 cents debt and
 damages whereof the said defendant moves
 the Court for a new trial herein and in arrears

of Judgement which motion for new trial and in error of Judgement was overruled It is therefore Considered by the Court that the said Plaintiffs have and recover of and from the said defendants the said sum of two thousand seven hundred and Eighty ^{and} Dollars & 73 ^{cts} for their debt and damages together with their necessary Costs & Charges by them in this behalf sustained. to which the said Defendants excepts

Bill of
Exceptions

State of Illinois }
Williamson County } es March Term
1860 of the Circuit
Court of Williamson County Illinois

Be it remembered that the March Term 1860 of the Circuit Court of Williamson County Illinois the cause came on to be tried Between John Mc Carthy and Virginia White administrators of Payton White deceased were Plaintiffs and James M Warren was defendant the Plaintiffs to sustain their issue offered as evidence a paper purporting to be a true transcript from the records of the County Court of Mason County Kentucky of an order of said Court granting administration of the estate of Payton White deceased to Plaintiffs which is in the words and figures following to wit:

State of Kentucky }
 Mason County Court } Oct September
 Term 1854

At a Court begun and held
 for the Mason County Court
 at the Court house then in the
 City of Maysville State of Kentucky
 on Monday the 18th day of Septem-
 ber 1854 Present Emery Whitaker
 Presiding Judge for said Court
 the following proceedings were had
 in said Court viz:

On motion John M. Carthy
 and Virginia White It is ordered
 that administration for the goods,
 Chattels, rights and effects of
 Payton White deceased be granted
 unto them thereupon the said John
 M. Carthy and Virginia White
 took the oath prescribed by law
 and with Payton J. Key and Jeremiah
 C. Wheeler their securitors entered
 into and acknowledged bond to the
 Common Wealth of Kentucky Con-
 taining according to law
 It is therefore ordered that Certif-
 icate of Administration be and

is hereby granted them in due form
 In testimony that the foregoing is a true Trans-
 cript or Copy from the records of said Court
 of the proceedings granting administration
 on the Estate of Payton White Deceased to John
 McElrath & Virginia White (and who are
 still his administrators according to law) I
 Robert A. Backron Clerk of said Court have
 hereto set my hand and affixed the
 Seal of said Court 12th day of Decem-
 ber AD 1859. Robt A. Backron Clerk
 State of Kentucky

Mason County 3^{ces}

I Emory Whitaker Presiding
 Judge of the County Court of Mason County
 in the State of Kentucky do hereby Certify
 that Robert A. Backron is Clerk of said
 Court that his attestation of aforesaid is in
 due form of law and that all acts
 by him so done full faith and credit
 are and ought to be given in Judicature
 and there out and the orders of
 Administrators a ^{copy or} ~~transcript~~ Copy of which is
 attested as aforesaid by the said Robert
 A. Backron Clerk of said Court have
 been granted in pursuance of and
 agreeably to the laws of the State of Kentucky
 dated this the 12th day of December AD 1859
 (Signed) Emory Whitaker Presiding
 Judge Mason County Court

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To the Introduction of which
said paper the said defendant
then and there objected and the
Court then and there overruled
said objection and allowed
said paper to be read in
evidence to the jury to which
suling of the Court the defendant
then and there excepted

The Plaintiffs then offered as
evidence a paper purport-
ing to be a record of a Case
determined at the October Term of
A.D. 1853 of the Mason Circuit
Court State of Kentucky between
Payton White Complainant and
James M. Worren and others
defendants which is in
the words and figures
following to wit:

Eighteen hundred Dollars until further order
of the Marion Circuit Court - Upon the
Complainant executing bond in the Clerk's
office with good security in the penalty
of four thousand Dollars conditioned as
the law requires The Bill filed by the fore-
going order is as follows to wit -

Original Bill

To the Honorable the Judge of the Marion
Circuit Court in Chancery sitting Compl-
aining respectfully sheweth unto your Honor
your Orator Peyton White that upon the
8th day of December in the year 1838
he entered into Partnership with a certain James
M. Warren for the terms of which he refers
to said article of Partnership herewith filed
and which he prays may be taken and consi-
dered as part of this his Bill marked B
that in the month of February December
1839 your Orator becoming dissatisfied
he dissolved partnership

with the said Warren and pursuant to the covenant and stipulations in said article of partnership he left with the said Warren the sum of one Thousand Dollars the amount of the capital by your orator advanced upon and for the use of which the said Warren was to pay him the sum of 12 1/2 per cent interest thereon Your orator would further represent unto your honor that said Warren is further indebted unto him in the sum of Sixty Six Dollars due by Three several promissory notes with interest thereon which notes are herewith filed marked No 1 2 & 3 and also in the further sum of Six hundred and forty seven Dollars due by account and your orator is also security for the said Warren for about the sum of \$500. Your orator would respectfully represent unto your honor that he verily believes that the said James M Warren fraudulently intends to sell convey and dispose of his lands goods wares Merchandize and choses in action with intent to cheat hinder delay and defraud your orator in the collection of his debts aforesaid he therefore prays your honor to grant to him a writ of attachment attaching the property of said Warren and restraining and enjoining said Warren from in any wise selling or disposing of his lands goods

4

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wares and merchandize and chases in action
to the amount of \$1800 and that upon a final
hearing your Orator prays your honor to cause
said property^{oo} attached to be sold and the procee
- do thereof or so much thereof as may or shall be ~~not~~
necessary to satisfy your Orator's demand applied
in discharge thereof amounting as the same now does
to at least Eight hundred Dollars your Orator
prays for the writ of subpoena to said Warren
whom he prays may be made a Defendant to this
his Bill with attachment and restraining order
thereon endorsed and for such other and further
relief as to Equity may belong and his case may requ
- ire he will pray &c.

Jno D Taylor atty for Comt

The article of partnership referred to in the forego
- ing Bill is as follows to wit

Article of Agreement made and entered into
Agreement between Peyton White of the County of Nicholas
and State of Kentucky of the one part and James
- M Warren of the County of Brocken and State
aforesaid of the other part Witnesseth That the
said White and Warren has this day enter
- ed into the merchandizing business in Copartner
- ership for the term of five years and each one

furnishing equal capitals the amount of which shall be one Thousand Dollars each to be appropriated for that purpose and ^{and the expiration of said time the proceeds thereof} no other and the proceeds thereof shall be equally divided between the Copartners The said White is to furnish a house situated in the County of Marion and State aforesaid near Sardus Meeting house for and in consideration of the sum of Forty Dollars to be charged to the said Firm or ^{Co}partners and it is further agreed by the parties that if either one of the parties become dissatisfied that the Capital shall remain in the establishment until the expiration of said Term at Twelve and a half per cent.

In testimony the said Payton White and James M Warren have herewith set their hands and seals December the 8th 1838

Payton White

James M Warren

Notes No 1, 2, + 3 referred to in the foregoing Bill are as follows to wit

Note No 1 \$20 Due Payton White Twenty Dollars balance due him on settlement April 6th 1848

J M Warren

Note No 2 \$40 Twelve months after Date I promise to pay Payton White forty Dollars for rent of

H.C.

house for one year from and after the 5th day
of July 1838 this 4 day July 1838

J M Warren

Note no 3

For value received I promise to pay J & F
Chambers Six Dollars + fifty cents witness my
hand this 23rd day of August 1838

J M Warren

Pay the within to Payton White

see page 40 for Impunction Bond J & F Chambers

The summons that issued on the foregoing Bill
is as follows to wit-

Summons

The Commonwealth of Kentucky to the Sheriff
of Mason County Greeting You are hereby
commanded to summons James M Warren to
appear before the Judge of our Mason Circuit
Court at the Court House thereof in the town of
Washington on the first day of the next August.
To answer a Bill in Chancery exhibited aga-
inst him by Payton White and this he shall in
no wise omit under the penalty of \$100 and
have then there this writ witness John James Key
Clerk of our said Court at the Court House afo-
said the 21st day of May 1841 and in the 49th
Year of the Commonwealth

John J Key

The Sheriff of Mason County is directed to
 attach the lands goods wares merchandize and
 choses in action of the Defendant James M
 Warren to the extent and amount of Eighteen
 Hundred Dollars and the said Sheriff will rest
 -ore or suffer the property attached to remain
 with the Defendant Warren on his executing
 Bond with sufficient security with adequate
 penalty to perform the Decree of said Court
 to wit Circuit Court of Mason County
 or have the property forth coming to answer any
 Decree that may be rendered in said Suit

John L Key Clerk

Sheriff's return

Came to hand 21st May 1841 Executed on James
 M Warren on the 24th day of same month and
 attached one house and lot in Sardisville
 supposed to contain one fourth of an acre of
 land bounded by the lot of ~~John~~^{John} M Reed and
 the residence of L E Brown being the same house
 occupied by the said James M Warren as a store
 house and no other property found to levy
 this attachment

Chas Clarke Dpy for
 Daniel Rumyon S M C

at a Court held for the Mason Circuit on the 22nd =
 May 1841

Order filing
Amended Bill

Upon motion of the Complainant by his attorney
 It is ordered that he have leave to amend his Bill
 filed herein whereupon he produced his amended
 Bill and swore to the same in open Court which
 is ordered to be filed and upon his motion It is
 ordered that process of Subpoena issue herein against
 said Defendants returnable here on the first day
 of the next Term of this Court - Upon further Motion
 of said Complainant It is ordered that the Def-
 = endants in the Amended Bill filed herein be enjoin-
 = ed and restrained from paying over to the Defend-
 = ant James M Warren any money they may have
 in their hands coming to the said Warren or
 any money they may owe to the said James M =
 = Warren until further order of this Court -

The amended Bill filed by the foregoing order
 is as follows to wit -

amended Bill

To the Honorable the Judge of the Mason Circuit
 Court Your orator Payton White would res-
 = pectfully pray your honor by way of amen-
 = dment to his original Bill

That James M Warren has not not suffici-
 = ent personal or real property that can be
 attached by the officers of the Court - to secure
 your Orator in the large sum of money that he

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owes him and he charges that he verily believes that there are various sums of money due and coming to him from others which ^{said} sums of money he fears that he will collect and fraudulently conceal and appropriate to his own use and cheat and hinder and delay your orator from collecting these sums of money due him and he is the more influenced to believe that the said Warren will ~~not~~ act thus fraudulently because on last night examining the Books that were kept as the partnership Books between them your orator discovered they are cut mutilated injured and erased so as to blind or defeat investigation and to prevent your orator from coming at the true situation of the accounts between your orator and the said Warren and the situation of the accounts between them and others your orator prays that the Sheriff be authorized to attach and hold the Books & accounts of the said Partnership and place them under the control of the Court for collection until this matter is heard in Equity your orator charges that he verily believes that the said James M. Warren has money in his possession and under his control derived from the proceeds of the partnership

and otherwise sufficient to pay your Orator's demand and he prays that he may answer and discover whether he has not. He charges that he believes that James M^c Millen Edward L Gonet William Watson Andrew Wells Thomas Thrackmorton S D Smith W Arburry are constables of Mason & Nicholas and Harrison Comities and that he believes they are owing the said Warren sums of Money or have claims in their hands for collection and will be owing him in a short time They also believe that John Adams Thomas Adams Calvin Bland Sam^l D Combers W^m Hilt Same Vancamp Thomas Vancamp L E Brown Same Bracraft are indebted to the said James M Warren and owe him money and that he verily believes that the said James M Warren will fraudulently collect the sums of Money due from these individuals and will fraudulently defeat your Orator in the collection of his debt To the end that Justice may be done he prays the persons named in this his amended Bill be made Defendants thereto and compelled to answer the same on oath and set forth and discern how much each one of them owe the

Page 11

said James M Warren and that they be decreed to pay the same over to your orator and in the mean time he prays your honor for the writ of Subpoena and injunction restraining these Defendants from paying anything over to the Defendants Warren until this matter may be heard in Equity and then decree them to pay it over to your orator to an amount equal to the sum of money due him and having already executed Bond in the case for \$4000 he asks this injunction without any additional bond being executed and he states he verily believes the Debts due Warren from those persons are not sufficient to pay his demand and grant him such other relief as to Equity belongs

D
Daylor & Payne for Compt
Mason Circuit Oct May Term 1841 The foregoing amended Bill was sworn to in open Court by Peyton White in the usual form
attest Jno Jas Key clerk met etc

Summons on The Summons that issued on the foregoing amended Bill is as follows to wit

The Commonwealth of Kentucky To the Sheriff of Mason County Greeting You are hereby commanded to summons James M Miller Edward L Gamet William Watson Andrew Wells

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Thomas Shrockmorton S D Smith W Asberry
 John Adams Thomas Adams Calvin Bland
 Samuel Combes Wm Helt Samuel Cracraft
 Samuel Vancamp Thomas Vancamp L E Brown
 to appear before the Judge of our Mason Circuit
 Court at the Court House thereof in the town of
 Washington on the first day of the next Augu-
 -st Term to answer a Bill and amended Bill
 in chancery exhibited against them and oth-
 -ers by Payton White and this they shall in
 no wise omit under the penalty of £100 and have
 then and there this writ witness John James Key Clerk
 of our said Court at the Court house aforesaid the
 22nd day of May 1841 and in the 49th year of the
 Commonwealth

Jno Jas Key -

Mason Circuit Ct

Upon motion of the Complain-
 -ant It is ordered that the Defendants in the amen-
 -ded Bill filed herein (whose names are inserted in
 the within Spa) be enjoined and restrained from
 paying to the Defendant James M Warren any mon-
 -ey they may have in their hands coming to said Warren
 or any money they may owe to said James M Warren
 attest Jno Jas Key Clerk

Sheriffs Returns
Page 13

Come to hand 22 May 1841 Executed on James
- Mc Millen and Samuel Vanceamp on the 22nd
and on Calvin Bland Thomas Anderson Thom-
- as Vanceamp and L E Brown on the 24th Exe-
- cuted on John Anderson William Watson and
Edward L Ganet on 25th of May 1841 Executed
Saml P Cambess on the 5th and Saml Bracraft
on the 12th and Annon Wells on the 25th and
on William Hiet on the 26th of June 1841
Thomas Shroermorton S D Smith and W-
- Asterry not found

Chas Clarke Dpy for
Dane Rinyon S M C

At a Court held as aforesaid the 26 May
1841 The Defendant James M Warren produ-
- ced his answer and cross bill which is ordered
to be filed And by consent of the parties by their
Attorneys It is ordered that the Complainant del-
- iver to the Defendant James M Warren all the
books and papers of the partnership and the pri-
- vate books and papers of the said Defendant
Except the Cash Book of the firm which is to be
placed in the hands of John M Reed for the use
of the parties The answer and cross bill of War-
- ren is as follows to wit-

The answer of James M Warren to bill in
Chancery exhibited against him in the Mason
Circuit by Dnyton White - This respondent
saying and reserving to him self now and at all

order filing
answer and
Cross Bill

answer and
Cross Bill

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times hereafter every benefit of exception to the many errors and ^{mistakes} ~~mistakes~~ in the Complainant's Bill Contained for answer thereto says that it is true that the Complainant and this respondent did form a partnership for the purpose of selling goods on the 8th day of December 1838 the terms of which partnership are contained in a written article between the parties bearing the date aforesaid and the same referred to in Complainant's Bill It is also true that they dissolved partnership on the first day of January 1840 the Complainant retiring from the business and your Respondent continuing to manage it as he had a right to do under the written agreement and use the Joint Capital invested in the business for the term of five years upon his paying to said White 12 $\frac{1}{2}$ per cent per annum upon the amount of capital which he has put in to the concern at the time of the dissolution your Respondent and ^{the} Complainant agreed that your respondent should pay said White \$527 for his share of the profits of said concern but if in settling up the partnership the firm should sustain any loss White was to bear a proportion of it He was to have his capital back + 12 $\frac{1}{2}$ per cent upon it but no settlement was made at the time they dissolved for the

Page 15

Purpose of ascertaining what Capitol said White at that time had in the concern at the time of this dissolution White was owing a considerable account to the firm for goods sold and cash paid him which was not paid at the dissolution nor has it been paid since. The amount of the account your Respondent cannot now state with any degree of accuracy as the books of the firm are not within his control at the time this answer was made. Your Respondent states that since the dissolution the said White has continued to purchase goods of your Respondent upon credit cash has been loaned to him in small sums as he would call for it and he has collected debts which were due to the firm and appropriated the money to his own use all of which he has not accounted for or offered to account for and all of which have been charged to him upon your Respondent's Books. The whole amount of the private account which White had created with the firm and with your Respondent since the dissolution amounts to between \$1300 + \$1400 Dollars and your Respondent has since the dissolution paid off the firm debts and collected firm accounts but the amount of either your Respondent ^{possibly} cannot tell without an examination of his books your Respondent by the

terms of the dissolution was to pay off the firm
Debts and collect the firm accounts and close
up the business of the concern and your Res-
pondent did go on to settle up the business
of the concern as speedily as under the pressure
of the time he could do

Your Respondent says that he cannot
possibly specify in relation to emms because
he says the said White has deprived him not
only of the partnership books and papers for
the charges that said White before the in-
stitution of this suit in the absence of your
Respondent went into your Respondent's
Store house and carried them away and now
has the possession of the same Your Respon-
dent states that the books of the firm were
correctly kept and were at all times under
the inspection of said White The said White
frequently examined said books and often
made charges against himself upon them
since the dissolution and the charge in the
Complainant's Bill that your Respondent
mutilated injured and defaced said Books
so as to blind or defeat investigation is entire-
ly false and if the Books present any thing
of the kind at this time it has been done since
White forcibly deprived your Respondent
of them

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Your Respondent in answer to the charge
 that your respondent fraudulently intends
 to sell convey and dispose of his property or
 money with intent to hinder cheat and delay
 the said White in the collection of his pretend-
 ed debts your Respondent says is entirely
 false your Respondent denies that he had
 or has any such intention but intended to
 still pursue his business at the same place
 and had recently laid in a stock of goods
 for that purpose your Respondent knows
 nothing of his indebtedness to White in the sum
 of \$647 due by account as charged in said
 Bill and denies emphatically that he is
 indebted to said White in any such sum
 except in the manner in which he has herein
 before stated The said White has an acc-
 ount against him for boarding hauling and
 some carpenters work done by him for your
 Respondent the whole of which cannot am-
 ount to the sum of \$200 The Debt of \$500 in
 which said White charges he was your
 Respondent security was one contracted
 by them whilst they were partners after the
 dissolution they executed this negotiable note
 to Artus & Metcalfe to whom the Debt
 was due and Artus & Metcalfe sold it to
 the Bank where it was protested and

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Artino + Metcalfe took it up and get hold
 it as to the note for \$40 filed as an exhibit
 by Compt he says that it was for the rent
 of the Store house for one year from 5th July
 1838 to 5th July 1839 that your Respondent
 occupied said house under said renting for
 3 months when he delivered it up to said
 White and afterwards in December 1838 he
 and said White occupied it in partnership
 so that your Respondent is only indebted
 upon said Note the sum of \$10 He admits
 that owes White the amount of the Note assigned
 by J + L J Chambers to said White The note
 for \$20 is entitled to a credit for \$15 paid in the
 summer of 1838 your Respondent owed White
 2 yards ^{and trunks of} cloth for same which amounted to
 \$15 and which White at the time agreed to credi-
 -t on said Note which he has failed to do
 White was indebted to your Respondent for
 goods sold him before they entered into partner-
 -ship which amounted to something like \$40 or
 \$50 which has never been paid or settled
 Your respondent says he cannot without
 an examination of the books of the firm ascer-
 -tain the amount of capital put into the concern
 by either party or the amount which they have
 withdrawn or the amount in which each was
 indebted to said firm and reserves to him

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Self the privilege of answering fully upon those subjects when he shall have examined the books He charges that said White has now the possession of not only the partnership books and papers but the private books and papers of your Respondent He states that the said Books were in a Desk attached to the Counter and White in your Respondents absence came and carried away the desk with the contents He prays that the said White may be compelled to deliver up to him his private Books and papers and in which he has no kind of interest and that the partnership books and papers may be by your Honor's order delivered to some safe person to keep and that he may have access to them

Your Respondent asks this answer may operate as a cross bill against said White That he may be compelled to answer the allegations herein that he say how much capital he advanced to said concern how much he has withdrawn what was his indebtedness to the firm what his indebtedness to your Respondent upon his private accounts both before the partnership during the partnership and since How much of the debts due the firm has he collected since their dissolution For what is your Respondent indebted to him in the sum of \$647 as he charges and that

He make such exhibition of the matters and things relating to said partnership as will enable your honor to settle and adjust it. He prays that said partnership may be settled and adjusted and for that purpose prays that said White may be made a Defendant to this Cross Bill. He again denies most positively and unequivocally any intention to defraud said White and that his charges touching that matter are untrue.

Reserving to himself the ~~the~~ right to answer more fully when he shall be permitted to examine his books and promising to give and a correct statement of their accounts. Statement of their accounts he declines to make further answer at present.

He prays for specific and general relief upon his cross Bill and that the attachment obtained by Complainant and the sequestrations so unjustly and unrighteously obtained be set aside and the attached property restored to him.

McClung & Taylor /s/

Marion Circuit Set May Term 1841

The foregoing answer and Cross Bill was sworn to by James M. Warren in open Court in the usual form.

At the Court Key

At a Court held as aforesaid 9th November
 1849 The Defendant James M Warren pro-
 duces his answer and Cross Bill to the Bill of the
 Cross Bill Complainant filed herein and swore to the
 same in open Court which is ordered to be filed
 which answer and Cross Bill is as follows
 to wit-

The amended answer and Cross Bill of James
 M Warren to the bills of Payton White exhibi-
 ted against him and others in the Mason Circuit
 Court from Respondent states by way of fur-
 ther answer and Cross Bill that the Complain-
 ant advanced as Capital to the firm of White
 & Warren at different times during the
 continuance of the partnership the sum of \$1347.52
 cents These advances were mostly in Bills of goods
 purchased by White and brought into the firm
 and from Respondent charges that \$103 was
 due by White at the dissolution upon one of the
 Bills which go to make the aggregate amount
 of Capital aforesaid and from Respondent
 charges that after the dissolution he paid said
 \$103 to Edwin Inreman of whom White had
 purchased the Bill of goods and to whom he
 owed it White was bound to give his time and
 attention to the business of the firm equally with
 Respondent And from Respondent charges
 that White had charge of the establishment

22

Only 4 months during the partnership and your Respondent was exclusively engaged in attending to the firm business from May 1839 to Jan'y 1840 about 8 months whilst White was engaged in his own private business and your Respondent charges that White should pay him for his services rendered over and above those rendered by White which your Respondent avers are worth the sum of \$166

In the fall of 1839 the firm shipped a quantity of Tobacco to Phila and your Respondent avers that upon that shipment they lost \$446.83 as shewn per Bill marked No 1 made part hereof In August 1840 they shipped an other lot to Cincinnati upon which they sustained a loss of \$149.34 as shewn by Bill No 2 made part hereof In December 1839 they purchased \$98 000 cigars which they shipped to Cincinnati part of which \$60 were sold however by Curtis & Metcalf and the balance are unsold and unsalable the loss on the cigars will amount \$214.00 as shewn by Bill No 3 made part hereof

Discount on Bank notes sent to Cincinnati to Pay firm debts

	\$40.00
	850.17 ^c

The firm during the partnership made bad Debts to the sum of

	\$629 23
	\$1479.40

23

As shewn by Bill no 4 made part hereof
 Your Respondent Charges that the above sum of
 fourteen hundred and seventy nine Dollars and
 forty cents were and are lost by the firm during
 said partnership Your Orators charges that the
 Tobacco shipped to Philadelphia in August
 1840 was purchased on time by White and Warren
 and was shipped to Philadelphia to raise funds
 to pay the debts of the Concern

Your Respondent Charges that White was
 indebted to him prior to the partnership in the
 sum of \$ 38.29

And of goods purchased by White during
 the partnership \$ 502.71

Since the dissolution of the partnership he has
 purchased goods and your Respondent has
 paid Debts for him settled accounts for him
 due by him to others (by means of the Store) and
 accounts due the firm collected by him to the am-
 ount of \$820.31
1361.31

So that White stands justly indebted to your
 Respondent in said sum of \$ 1361.31 and also
 in amount paid Gureman as aforesaid 103.00
 and also for services rendered the partnership
 as aforesaid \$166.00
1630.31

as to the account in favor of White against

24

68

Your Respondent filed herein with the
Deposition of Isaac S Reed amounting to
\$111462 cents your Respondent says that it is
true that the same is in his hand writing but your
Respondent apprehends that ~~letter~~^{letter} might sho-
uld be attached to that circumstance when the
facts are known your Respondent charges
that the Complainant and himself were about
to make a settlement when the Complainant
produced a Memorandum book of his own con-
taining his account against your Respondent
The account was so badly stated that it was
necessary to have it copied for the purpose of
understanding it and your Respondent did
at Whites request and under his direction
draw off the accounts from Whites memorem-
dum book and the Copy which he drew of was
retained by White and is the same filed with
Reeds Deposition but your Respondent
charges that it was about this very account
that your Respondent and White disputed
and is the original cause of the difficulty
between them your Respondent did not then
admit said account to be correct nor does
he now admit it to be so but denies that it
is just and correct and if the same is to be
charged against him requires strict
legal

215

Proof of the same. The last item in said account he admits is for the price of the profits of the firm purchased by him of Complainant as detailed in his original answer.

Your Respondent as in his original answer and cross Bill charges that White was to bear his proportion of the losses which the firm might sustain and your Respondent states that at the time of the dissolution no attempt was made to settle the partnership accounts to ascertain either the amount of profits made or loss sustained and to prevent the hazard your respondent would run in giving White \$527 for the profits 12 1/2 per cent upon his capital and taxing upon himself the burden of paying the debts of the firm it was expressly agreed that each should bear a portion of the loss which the firm might sustain upon its final settlement.

Your Respondent prays that this amended bill answer may also appear as a cross bill against said Complainant, and that he answer the same. He prays for a settlement of their accounts individual as well as partnership and that White be compelled to pay the balance which may be found due your Respondent and having fully answered he asks that

mistake in
transcribing

26

Complainant's Bill of attachment be dismissed with cost and your Respondent be relieved upon his cross Bill

Mc Clemy & Taylor / & C

Mason Circuit Ct

The foregoing amended answer & cross bill was sworn to before me in the usual form Oct 31st 1841

Attest John Law Key clerk

Bills no 1, 2, 3, & 4 referred to in the foregoing answer and cross bill are as follows to wit

Bill no 1

Messrs White & Warren

1839 To James M Warren Dr

Dec 20 To 28735 lbs Tobacco at 5.00 \$1436.75

" 31 Hogheads Con some 2.25 69.75

" Pricing the same @ 25 per 100 lbs 71.83

" Hauling the same to Mansfield 250 77.50

1840 Cr \$1655.83

July By neat amt paid of Tobacco 1209 00

Loss 446.88

223 41

This lot of Tobacco was shipped to Philadelphia by Edwin Foreman & Co and placed to the credit of White & Warren as the enclosed Bill will show by him

Messrs White & Warren

In apt with E Foreman

To amt balance on apt

939.38

939.38

27 Interest for 6 mo^o on 375^o 11.25

Note due 1st Nov 1839 + interest 219.73

Loss in the measure of peaches 5.25

Or 1175.61

By Nett Proceed Tobacco 1310.00

Bal Due W + W 135.61

To amt of 2 Chas of dit lot 101.47

34.14

Bill no 2

White + Warren

118.40 To James M. Warren Dr

Aug 12^o To 8568 lbs Tobacco which was shipped by Curtis + Malcalfe to cin to Jno = Taylor and sold by him which cost at our ware house \$5 per 100 lbs amt 428.40

10 Hogheads Cow Same 225 22.50

Pairing same at 25 per 100 lbs 21.42

Hauling the same to Maysville 250 per H 25.00

Storage by Curtis + Malcalfe 50 per 26 5.00

Freight to cin \$1.00 per 26 10.00

Drayage on same in bin 25 2.50

Or

By Nett proceeds of same by Taylor's sale of sales Tobacco 365.48

Loss

149.34
74.67

Bill no 3

White + Warren

To Jas M Warren Dr

To amt 98.000 Cigars at 180 sent cin to John-

Taylor & remain there at this time amounting to the

28

Sum of	\$147.00
Hauling the same to Mayville	4.00
Freight & Storage	3.00
Dec 1839. 8000 sent to Mayville Arthur & Metcalfe	20.00
<u>C. r</u>	<u>274.00</u>
By amt sold by Arthur & Metcalfe	65.00
<u>Loss</u>	<u>214.00</u>
<u>Half</u>	<u>107.00</u>

Bill no 4

White & Warren

1840 To James M Warren Dr

To Sundry bad Debts which have been returned by the officers no property found as follows

1 note on Solomon Beedins	\$42.34
1 ap on same	13.56
1 " " John R Badens	56.43
1 " " George Henson good	48.95
1 note on Martin Garrison good	13.99
2 " " Clermont Rig	31.88
1 ap " Vincent Salaman	10.00
1 note " S D Wheeler	40.12
1 " " John S Brewer	9.75
1 " " Wm Dotson	28.90
Sundry notes on Ambrose Collins	115.00
1 note on H. B. Cooper good	27.20
1 do Starks Wheeler	8.69
1 do V M Neal afterward	6.64

29	1 Do Wm Lyons collected	22.00
	1 ap James Wilson	18.00
	1 Note on Wm Lenville afterwards	42.00
	1 " " Geo Lenville afterwards	8.50
	1 " " Rolley Chim	11.00
	1 " " Eli Bratton	15.00
	1 ap Leonard Mullikin collected	9.72
	1 Archibald Whitley same	9.00
	2 Notes same same	6.00
	3 " William Witt	118.00
		<hr/>
		2) 719.75
		<hr/>
		359.87
		<hr/>
		90.12

amt brought \$ 269.75
 719.75
 3 notes of the within Stricken out 90.12
 2) 629.63
 314.81

At a Court held as aforesaid the 24th November 1841

order filing answer The Complainant produced his answer to the answer and cross bill, and the amended answer and cross bill of the Defendant James M Warren filed herein, and swore to the same in open court which is ordered to be filed

Which answer is as follows to wit:
 answer of White " The answer of Peyton White to the answer and cross bill and the amended answer & cross bill of James M Warren to a Bill filed by this

answer & cross

Respondent in the Mason Circuit Court against
Bill of Debt - inst the said Warren

This Respondent answering says that the terms of dissolution of the late firm of White & Warren as set forth in said Warrens said answer are not correct or true but that by the agreement of dissolution the said Warren took the goods & in hands in the Store purchased all the Debts due the firm and assumed all the liabilities of the firm, for which said Warren agreed to pay this Respondent \$527 - besides paying him 12 1/2 percent annually upon \$1000 of Capital until the expiration of the firm five years from the date of the commencement of the partnership which said \$1000 he was then to refund to this respondent besides allowing to this Respondent \$347. 50 being a surplus of Capital paid into the establishment by him, the individual accounts of the partners on the books and their respective claims against each other remaining to be adjusted. This was the true and acknowledged principle of their said settlement and this respondent states that he does not know the exact amount of the individual accounts either of himself or Warren, but that they will appear doubtless from the books which are in the hands of the said Warren himself. This Respondent

31 Expressly denies that previous to the said partnership he was justly indebted to said Warren, as in the amended answer he hath charged. He denies that the account of this Respondent on the partnership books and of goods pretended to have been purchased since the dissolution as set forth in the said amended answer, amounting to 1323.02 is correct, and calls on said Warren for strict legal proof thereof.

This Respondent states that the firm of White and Warren never purchased any Tobacco for shipment or sale as set forth in the said amended answer, and he expressly denies that the said Warren ever purchased any Tobacco for said firm, and that he therefore denies in toto the justice of the said account - to nos 1 & 2 for Tobacco amounting together to the aggregate sum of \$596.17, charged as loss and if any such Tobacco was ever shipped or sold, it was purchased by said Warren on his own individual account.

This Respondent denies that the amount of Capital advanced by him & credited to him on the books of the firm of White & Warren is subject to the reduction of \$103 as set forth in Warren's said ^{part} answer and if he is to be charged therewith he requires strict legal

Proof

46

32

As to the charge for services set up by Warren of \$166. Respondent states the same to be totally false and incorrect, which he has no right whatever to make. Moreover all such matters have been settled finally in their said settlement, & if Respondent is to be charged he calls for proof.

This Respondent denies the correctness of the charge of \$214 less on cigars, the charge of ~~\$6.29~~⁴⁰ discount on notes and the charge of \$629.23 for bad Debts. All those charges are false and should not be set up against this Respondent and if he is to be charged there = with he calls for strict legal proof.

This Respondent expressly denies that the statement of Warren is true in which he says that the statement of the account of \$1114.62 made out in his own hand writing was merely copied at the suggestion of this Respondent on the contrary no item was set down in said ap by said Warren which was not admitted by him to be correct.

And having fully answered said answer & amended answer this Respondent prays as in his original and amended Bills & for speedy relief.

Payne & Waller for
White

33

Mason Circuit Set

The foregoing answer was sworn to by Payton White in the usual form.

Attest John James Key Clerk

order filing amended Bill

At a Court held as aforesaid the 26th May 1842 Upon motion of the Complainant by his attorney It is ordered that he have leave to amend his Bill filed herein, whereupon he produced his amended Bill which is ordered to be filed, and upon his motion it is ordered that process of subpoena issue herein on said Amended Bill, against the Defendants, returnable hereon the 18th day of the present term Upon further motion of said Complainant It is ordered that the Defendant James M Warren or his assigns if any, be enjoined and restrained from receiving the amount of his Judgement obtained at the last November Term of this Court against Thomas Vancamp from him or from the Sheriff or any other person or officer, and Charles Clarke the Deputy Sheriff is enjoined and restrained from paying over the said money, to said James M Warren or any one else and he is directed to hold the same subject to the order of this Court, and the said Sheriff is directed if he has not collected the amount of the Judgement aforesaid to proceed and collect said Judgement, and it is ordered that no additional bond be required

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in this cause, and the cause is continued until
the next Term

The amended Bill filed by the foregoing
order is as follows, to wit

Amended Bill The third amended Bill of Payton White to
an original Bill filed by him and which is now
pending in the Mason Circuit Court, against
James M Warren & al

Your Orators charges that on the 22nd May
1841 he filed his first amended Bill in which he
enjoined and restrained one Thomas Vancamp
from paying over to said Warren or any one for
him, certain amounts which were charged to be
due and owing from said Vancamp to said
Warren and praying your honor to subject the
same to your Orator's claim upon the said
Warren. Process issued on the said amended
Bill and the restraining order endorsed, on the
day of which said bill was filed, and was
served on said Vancamp on the 24th May 1841
all which will fully appear from the said 1st
Amended Bill & the process, order and servi-
ce thereon endorsed, which are now filed in
this cause

He charges that Thomas Vancamp
was indebted to said Warren, at the time said
amended Bill was filed and said order of
injunction served in the sum of Sixty Six

30

Dollars by an order drawn by said
 Vancamp and Eleana Watson on one Joseph
 - Koon in favor of said Warren which order was
 not paid by said Koon; which order was dated
 13^d December 1840 he charges that although the
 said Vancamp was enjoined as aforesaid from
 paying the said sum yet said Warren institut
 - ted suit against said Vancamp and Watson
 and obtained Judgement the sum of the said
 Vancamp above at the last November Term of the
 Mason Circuit Court, and the execution on said
 Judgement is now in the hands of Charles Clarke
 Deputy Sheriff for collection, who is now
 pressing the said Vancamp for payment and will
 pay the same over to said Warren or his assigns
 unless prevented by the interposition of your
 Honor

Your Orator therefore exhibits the record
 and proceedings at law in case of said Warren
 against said Watson & Vancamp and makes
 them part of this amended Bill, and prays that
 said Warren or his assigns if any, be restrained
 and enjoined from receiving said money from
 said Vancamp or from the said Sheriff or any
 other person or officer that said Deputy
 Sheriff Clarke be authorized to proceed to
 collect the said amount and cost of Judgement
 from said Vancamp, but that the said Sheriff,

36

Be enjoined and restrained from paying over the same to said Warren or anyone else and that he be directed to hold the same subject to the order of your honor
He prays as in his original bill and as in duty &c will ever pray &c

Payne & Waller Lawyers Rice

Mason Circuit Ct. May Term 1842

The foregoing amended Bill was sworn to by Peyton White in open court in the usual form

attest Jno Jas Key Clerk

The Record referred to is as follows, to wit
Mason Circuit, County of Mason, Sct

Record of the
suit of
James M Warren
against
E Watson et al

The plaintiff James M Warren states that he is the holder of a Domestic bill of Exchange on the Defendants Eleona Watson and Thomas Vancamp as drawers in substance, as follows, to wit

M^r Joseph How

Sir please pay James M Warren Sixty Six Dollars and oblige yours and charge the same to us December 13th 1840

signed Eleona Watson

Thomas Vancamp

And the plaintiff avers that the said Defendant the drawers of said bill drew the same without authority and without funds - and he further avers that he presented said bill to the said Joseph How for his acceptance on the day of

December 1840 and he then and there refused to accept the same of which the Defendants have had due notice to wit on the day and year last aforesaid at the County and Circuit aforesaid

Yet the amount thereof remains unpaid wherefore the plaintiff prays Judgement for the amount due on said Bill, and damages for the detention of the same, together with his Cost, James M Warren, Plt

Mc Clenny & Daylor p q

The summons that issued on the foregoing Petition is as follows, to wit

Summons

The Commonwealth of Kentucky, To the Sheriff of Mason County Greeting We Command you to Summon Elcana Watson and Thomas Vancamp to appear before the Judge of our Mason Circuit Court at the Court House thereof in the town of Washington, on the first day of the next November Term to answer a petition filed against them by James M Warren for the non payment of sixty six Dollars due by Domestic bill of Exchange and this they shall in no wise omit and have then there this writ witness John James Key clerk of our said Court at the Court house aforesaid, the 22 day of October 1841 and in the 50th year of the Commonwealth

John James Key

Came to hand 22nd October 1841 Executed on

38

82

Thomas Vancamp on the 27th of same month
Eleana Watson not found Chas Clarke Dpy for
Dane Runyon S'm C

At a Court held for the Mason Circuit on
the 9th Nov 1841

Upon Motion of the Plaintiff by
his attorney It is ordered that this suit abate
as to the Defendant Eleana Watson as
per Sheriff's return and he having filed his
petition herein on the 22nd day of October 1841
and the Original summons which issued thereon
having been duly executed on said Defendant
Thomas Vancamp. he was solemnly called but
came not.

Judgement It is therefore ~~ordered~~ considered by the Court
that the plaintiff recover against said Defe-
ndant Thomas Vancamp, the sum of Sixty-
Six Dollars the Debt in the specialty filed herein
mentioned, with interest thereon at six per centum
per annum from the 13th day of December 1840
until paid and also his costs by him herein expen-
ded

The execution that issued on the fore-
going Judgement is as follows to wit

Execution

The Commonwealth of Kentucky To the Sher-
riff of Mason County Greeting Wherefore com-
mand We command you that of the estate of
Thomas Vancamp you cause to be made the

39

Sum of Sixty Six Dollars which James M. Warren late in our Mason Circuit Court recovered against him for Debt, with interest thereon from the 13th day of December 1841 until paid also the sum of \$13.27 which to the said Warren in the same Court was adjudged for his costs in that suit expended. Whereof he is convicted as appears to us of record and that you have the same before the Judge of our said Court on the third Wednesday in April next to render to the said Warren the Debt, interest and cost aforesaid, and have then there this writ & itness Samuel W Owens clerk of our said Court at the Court house in the City of Mayeville this 13^d day of February 1854, and in the 62nd year of the Commonwealth

S W Owens

This ^{last} Execution issued on a Judgement rendered at the Term 18 and is to have credit for \$4.31^c made 10th June 1842 and is for the benefit of M^c Clung & Taylor per assignment on bifa 15 April 1842

S W Owens

Sheriff's Return

Came to hand February 15th 1854 at 10 O'clock A.M. No property found April 19th 1854

Jos J Wilson Dpy for
W B A Baker S M C

84

40 - The summons that issued on the foregoing am-
-ended Bill is as follows, to wit
The Commonwealth of Kentucky, To the Sheri-
-ff of Mason County Greeting You are
- hereby Commaided to summon James M War-
-ren and Charles Clarke to appear before
the Judge of our Mason Circuit Court at
the Court House thereof, in the Town of Was-
-hington on the 18th day of the present May
Term, to answer an amended bill in Chancery
exhibited against them by Payton White and
this they shall in no wise omit under the Penalty
of \$100 and have then there this writ witness
John James Key Clerk of our said Court, at
the Court House aforesaid the 26th day of
May 1842 and in the 50th year of the Commonwealth

Jno Jas Key

Mason County Ct: Upon motion of Complai-
-ant It is ordered that the Debendant James M-
-Warren or his assigns if any be enjoined and
restrained from receiving the amt of his Judge-
-ment obtained at the last November Term of
this Court against Thomas Vancamp from
him or from the Sheriff or from any other person
or officer and Charles Clarke the Deputy
- Sheriff is enjoined and restrained from pay-
-ing over the said money to said James M-
-Warren or anyone else, and he is directed to

41 To hold the same subject to the order of this Court and the said Sheriff is directed if he has not collected the amount of the Judgement aforesaid, to proceed & collect said Judgement

Attest John James Key Clerk
Executed on Charles Clarke on the 28th day of May 1842

Robt Kumpbreys Dpy
for Danc Remyon S M C
James M Warren not found
Charles Clarke Dpy for
Danc Remyon S M C

Order referring
suit to Master
Commissioner

at a Court held as aforesaid, the 26th Novem-
ber 1842. By consent of the parties, it is ordered
that this suit be referred to Marshall Key the
Master in Chancery to settle the accounts between
the parties the said Master in Chancery shall
have authority to hear any evidence that either
party may produce and examine either of the parties
under oath, upon interrogatories in writing prop-
ounded by the opposite party, and to report
the evidence and answers of the parties to this
Court and the cause is continued till the next
Term

Order referring
Suit + July Term

At a Court held as aforesaid on the 30th May
1843. By consent of parties this case is referred to
Marshall Key as a Master in Chancery or Commissioner

42 To settle the partnership accounts between the
said parties

And it is agreed that either of said parties have the right to call upon the other to answer interrogatories under oath, by filing his written interrogatory with the Commissioner, and the said Commissioner is directed to take any evidence that may be produced to him and report the same to this Court and the cause is continued until the next term at a Court held as aforesaid on the 29th May 1844 Upon motion of the Complainant It is ordered that he have leave to amend their Bill filed herein Whereupon he produced his amended Bill and swore to the same in open Court which is ordered to be filed and the cause is continued until the next term of this Court

Amended Bill The Complainant Payton White comes and amends his bill in this cause and charges that he loaned to the Defendant James M Warren one hundred Dollars in the presence of Charles Henke and the same remains due and unpaid to your Orator and the said one hundred Dollars is a just and correct charge against the said James M Warren in the settlement of the accounts of the said parties, and your Orator is entitled to a Decree over against the said James M Warren

43 For the said sum, and to a ^{sale} of the attached effects, to pay the same, the said one Hundred Dollars has been overlooked and left out of his account against Warren by some mistake of his Lawyer but he now prays to amend his said Bill and charges the said sum of one Hundred Dollars is a just and correct charge against the said James M Warren and claims a Decree for the same in addition to the other claims set forth in his original and amended Bills. He prays for general relief and is in duty Bound &c

Payne & Waller D of
 Mason Circuit Ct

The foregoing amended Bill was sworn to by Payton White in open Court in the usual form

John James Key Clerk

At a Court held as aforesaid on the 19th
 August 1844

order filing

answer

The Defendant James M Warren produced his answer to the amended bill filed herein, and sworn to the same in open Court, which is ordered to be filed

Which answer is as follows, to wit

answer of

James M Warren Bill of Payton White filed against him in the suit of White against Warren on the 29th May 1844

44

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Respondent admits that the Complainant did loan to Respondent the sum of One Thousand Dollars which respondent paid over to Charles Clarke in part payment of an execution which Clarke held against your respondent, which your respondent had supposed had already been set up against him in this suit and having fully answered he prays to be hence dismissed

M^c Clung & Taylor for Defs

Main Circuit Oct: August Term 1844

The foregoing answer was sworn to by James-M Warren in open Court in the usual form

att Jno Las Key Clerk

at a Court held as aforesaid on the 2nd December 1845

order filing
Comis
Report

The Commissioner Marshall Key presented his Report and the Court having examined and approved of the same It is ordered that said report be filed

Which Report is as follows. to wit

Comr's Report

This cause having been referred to the undersigned as Master in ^{the} Chancery, He begs leave to report that ^{it appears} by the article of Copartnership between White and Warren, dated the 8th of December 1838, that each of them were to put into the concern One Thousand Dollars, the partnership, to continue for five years: but if either of the parties became dissatisfied, that the Capital

45 Should remain until the expiration of the term at 12 1/2 per cent. It appears from the pleadings that White withdrew from the concern in December 1839, and the partnership was then dissolved as admitted by the parties. It appears from the proof in the cause that White advanced to the firm before the dissolution \$1347.52 cents upon which sum he claims interest from the time of the dissolution of the partnership. It also appears by the Deposition of Charles Clarke that in the spring of 1840 White paid him \$100. for Warren and in the spring of 1841 he also paid him for Warren \$18.92 cents. It also appears by an account filed and proved by Isaac S. Reed to be in the hand writing of Warren, that Warren was indebted to White in the sum of \$1114.62 cents of which sum \$527 was the amount agreed by Warren to pay to White for his interest in the concern for the time they were in partnership. There are three notes filed which White claims as due to him, one of them for \$40 for the rent of the Store house the rent was to be commenced on the 5th of July 1838 five months previous to the commencement of the partnership. of this sum \$16.66. is allowed to White, as by the terms of the partnership, White was to furnish the store house and therefore was not entitled to rents while the house was occupied by the firm. These items constitute the

46 Claims of White on Warren as proved in the emit.
 By the answer of and Cross Bill of Warren, he sets up claims to a large amount and calls on White to answer his Cross Bill. White denies all the charges made by Warren, and calls on Warren for legal and Strict proof thereof: Warren has failed to file the account which he alleges White owed to him before and subsequent to the dissolution of the partnership. he alleges that the account amounts to \$132302 cents, but there is not any proof showing the amount due by White to Warren other than the allegations in Warren's answer and Cross Bill, which is denied by White

The undersigned submits herewith a statement of the accounts which he makes a part of this Report

Marshall Key

James M Warren

To Payton White Dr

To amount of advances made to partnership	\$1347.52
Interest thereon from 1 st Decr 1839 to 1 st Decr 1845	\$485.00
To amount of account proved by Isaac Reed	3 months
dated 1841 say 1 st Dec 1841 to 1st Dec 1841	
Interest thereon from 1 st Dec 1841 to 1 st Dec 1845	1114.62
To cash lent as proved by C Clarke say 1 st May 1840	100.00
Interest from 1 st May 1840 to 1 st Dec 1845	33.50
To Cash paid C Clarke on Execution say 1 st May 1840	18.92
Interest thereon from 1 st May 1841 to 1 st Dec 1845	\$4.54

47	To Note due 6 th April 1838	\$ 20.00
	Interest thereon to 1 st Dec 1845	9.30
	To Note to X & Y Chambers due 28 August 1838	6.50
	Interest thereon to 1 st Dec 1845	2.73
	To Note for rent (in part) due 5. Dec 1838	16.66
	Interest thereon to 1 st Dec 1845	6.99
		<hr/>
		3433 78

Payton White

To James M Warren Dr

To amount of account in Store before dissolution of partnership as per Warrens answer and Cross Bill	\$502.71
Interest on same from 1 st Dec 1839 [the time of the dissolution of the partnership] to 1 st Dec 1845	\$180.96
To amount of account claimed after the dissolution of the partnership as per Cross Bill	820.31
Interest thereon from the 1 st May 1841 [the time of filing the Original Bill] to 1 st Dec 1845	221.84
	<hr/>
	1725.82
	<hr/>
	\$1708.96

The undersigned has stated the claim of Warren against White. if the Court should be of opinion there is evidence sustain the claim all which is respectfully submitted

Marshall Bay 1st Dec 1845

At a court held as aforesaid, the 25th May 1846

By Consent of the parties. It is ordered that the order of continuance made herein be set aside and the cause submitted to the Court

Order of submission

48

92

At a Court held as aforesaid on the 28th day
of November 1846

Entry

This day this cause coming on upon the bill
the answers, exhibits and the Depositions in the cause
and the Commissioner having made his report in this
cause, the Court affirms said report and now decrees
that said James M Warren stands indebted to said
Payton White the sum of Eleven Hundred and Eigh-
ty two Dollars and ninety six cents which the Court
now decrees the said Warren to pay to the said Payt-
on White, and the said White shall have execution
for the same and the Court further Decrees that
the said Payton White has a right to a sale of
the attached property to pay the same

The Court now appoints James Clarke a Commis-
-ioner and direct him to advertise the house and lot
lying in the town of Sardis supposed to contain about
one fourth of an acre being the same attached in this
cause and the same heretofore occupied as a store
room by James M Warren, for four weeks in four
public places in the County and at the Court house
~~door~~ and then sell the same at the Court House
door in Washington on a Court-day to the highest
bidder on a credit of twelve months taking bond
and security to said Payton White for the purchase
money, and report the same to the Court for its
their approval, or so much thereof as will be suffi-
-cient to pay the Complainant his Debt and

49 Cost of this suit, including fifteen Dollars now allowed Commissioner. And the said Commissioner shall also audit the debts or claims or other attached in this cause and hear testimony and report to the Court the amount that may be now due to Warren by either of his Debtors or that was due at the time the attachment in this cause was served upon them and shall report the testimony to this Court, that he may take; and the cause is continued ~~until the next term of this Court~~

At a Court held for as aforesaid on the 2nd day of March 1847

The Commissioner James Clarke produced his report herein which having been examined and approved of by the Court, is ordered to be recorded as follows, to wit-

Comr's Report" The undersigned Commissioner appointed by the Decree of the Mason Circuit Court, in the above suit rendered at the November Term 1846, would respectfully report to the Court, that on the 9th day of January 1847, he sold at public auction, before the Court House door in the town of Washington, one house and lot lying in the town of Sandis, supposed to contain about a quarter of an acre as mentioned in the Decree, after advertising the same for four weeks as required in said decree) upon a credit of twelve months, bearing interest from date and payable to Payton White, John M^c Conthey being the highest bidder

50

Become the purchaser thereof at the price of Two Hundred
 and five dollars (\$205) and Executed bond with
 with Edward L Gault as his security which bond is here-
 with returned Your Commissioner having notified Peyton
 White the Plaintiff in the above suit that he was prepared
 to audit the Debts, or claims on others, attached in this
 cause, and the said Peyton White having failed to produce
 any evidence relative to the said claims, Your Commissioner
 has none to return: all of which is respectfully subm-
 ited

James Clarke Commissioner

Comrs allowed

Ordered that James Clarke retain the sum of fifteen
 Dollars, for his services as Commissioner herein out
 of the sale bond executed to Peyton White by John
 Mc Carthey and Edward L Gault for the purchase
 money of the house and lot sold by him as Commissioner

At a Court held as aforesaid, on the 26th October
 1853 ~~_____~~

Final Decree

(This day this cause came on for final hearing) and
 the Court being sufficiently advised now decrees and
 orders. That the Commissioner Marshall Key has
 reported that the said James M Warren stands
 indebted to the said Peyton White in the sum of
 \$1708.96, on the 1st December 1845. The said James
 M Warren is entitled to a credit for the amount of
 the sale as reported by James Clarke the Commissioner
 amounting to \$205 this sum shall be deducted
 from the amount found due by the Master Commissioner

51 Which would leave the sum of \$1503.96 due to the said White with interest from 1st December 1845

The Court now decrees that the said James M-
Warren pay to the said Payton White the sum of \$1503.96
with interest on the same from 1st day of December
1845 till paid

And that the said Payton White have execution
against James M Warren for the said sum of =
\$1503.96 with interest on the same from 1st day
December 1845 till paid

And the parties are hence dismissed without
day

The injunction Bond omitted ^{in its proper place,} in this case is as
follows, to wit

Injunction
Bond


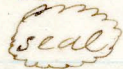
Know all men by these presents, that we Payton
White ~~White~~ and John M^cCanthoy are held and firm-
ly bound unto James M Warren in the penal sum
of Four Thousand Dollars for the payment of which
well and truly to be made we bind ourselves our heirs
executors and administrators jointly and severally
firmly by these presents sealed with our seals and
dated the 21st day of May 1841

The condition of the above obligation is such that
whereas a suit in Chancery has been instituted
in the Mason Circuit Court wherein the said
Payton White is Complainant and the said
Defendant in which said suit the Plaintiffs
obtained an injunction and restraining order

96

52 and attaching enjoining and restraining the said
James M Warren from any wise selling or disposing
of his lands goods wares and merchandise, and
Choses in action to the extent of Eighteen hundred
Dollars until the further order of the Mason Circuit
- Court

Now if the said Payton White shall well and
truly ~~pay~~ prosecute said suit with effect or shall
well and truly pay unto the said James M Warren
all such costs and damages he may sustain by
the wrongful suing out the said injunction and
restraining order in this suit then the above obliga-
-tion to be void else to remain in full force and vir-
-tue

Payton White 
John M^c Conthey 

On the 31st May 1841 was filed the following
answer herein, to wit:

answer of
Payton White

To the Honorable the Judge of the Mason Circuit -
Court in Chancery sitting (Your Orator Payton
White by way of amendment to his original Bill
would represent unto your honor that since
filing his original Bill he has learned that
John B M^c Elrain stands justly indebted to
James M Warren about Seventy Dollars that the
said Sum of Money is now due and owing from
the said John B M^c Elrain to James M Warren
and the money is now in his M^c Elrain's hands

5-3 He further charges that he fears that the said James M Warren will collect the amount of the money from Jno B Mc Elvain and leave your Orator remediless

He charges that the amount already enjoined and the \$ 70. due by Mc Elvain will not be sufficient to pay the Debt due your Orator

He prays that John B Mc Elvain be made Defendant and compelled to answer to this amended Bill and be compelled to pay the said money due to your Orator and in the meantime that the said John B Mc Elvain be enjoined and restrained from paying the said money over to James M Warren until this matter may be heard in equity and prays for a Decree as in his original Bill & c.

Payne & Waller ps of

Marion County & Circuit

Personally appeared before me Payton White and made oath the facts stated in this amended Bill are true Given under my hand this 31st day May 1841

James Arthur J. P.

The Clerk of the Marion Circuit Court will issue the injunction as prayed for in the written amended Bill, without bond the said White heretofore given Bond in this case Given under my hand this 31 May 1841

L Collins J. P.

M. Markama J. P.

The Summons that issued on the foregoing amended
Bill is as follows, to wit:

54

Summons

" The Commonwealth of Kentucky To the Sheriff
of Mason County Greeting You are commanded
to Summon John B^c McElvain to appear before the
Judge of the Mason Circuit Court on the first day of
the next August Term to answer in a certain suit in
Chancery in which Peyton White is Complainant
and James M Warren and John B^c McElvain and
others are Defendants and this you shall in no wise
omit under the penalty of One Hundred Dollars
Witness Jno James Key Clerk of the Mason Circuit
Court at Washington, this 31st day May 1841

John James Key Clerk

The Sheriff is directed when he executes this writ on
John B^c McElvain to enjoin and restrain him from
paying over to James M Warren the sum of Seventy
Dollars that he may be due and owing to the said
James M Warren until the further order of this Court
May 31. 1841

Jno Jas Key clk

Sheriff Returns

Come to hand May 31st 1841 and executed on the same
day

Charles Humphreys Deputy
for Dame Runyon S.M.C.

The Exhibits filed in this case are as follows to wit

James M Warren

James M Warren

Acpt		1841		In. A. with Payton White	
55	"	To amount of Honson & Demick	\$ 89.00		
	"	" Steer or Beef	14.00		
	"	amt or order to Clay	100.00		203.00
1841	"	To Robert Hill	7.50		
	"	Chas Honson	16.00		
	"	amt paid W Martin	10.00		
	"	Cash sent A. Min Mays	5.00		
	"	Building Shed Room	40.00	78.00	
	"	Counter & Shelves	30.00		
	"	Hauling Tobacco & C	4.00		
	"	amt Paid Jefferson	1.50		
	"	" 150 Planks	189		
	"	7 Days in Store	3.50	40.87	
	"	Hauling Emmaus to Maysville	3.00		
	"	Do B Molasses	3.50		
	"	" 2 Sacks Coffee	1.00		
	"	" 16 Hogheads Tobacco	40.00	47.50	
	"	" Sunders	2.50		
	"	" 2 Sacks Coffee	1.00		
	"	" 1 Day hauling Timber	4.00		
	"	" 1 Do Store	3.00		
	"	" 2 Loads from Reed	5.00		
	"	Hauling Planks for Waller			
	"	" 2 Loads from Bell	3.00	18.50	
	"	Do Shingles	1.00		
	"	1/2 Gall Molasses per Reed	75		
	"	Wilfred Ball	1.00		
	"	Haulings from Balls	2.00	4.75	

		100	
56	Hauling Wheat		3.00
"	Timber for Platform		1.00
"	35 Boarding hands		7.00
"	Boarding 2 Backs		75
"	House for Tobacco	6.00	17.75
"	" rent for Store	40.00	
"	Keeping Horse	10.00	
"	amt paid in	1.25	51.25
"	amt of Board	125.00	125.00
	1841 To amount paid		527.00
			<u>1144.62</u>

E Lawrence's
account

Messrs Warren & Warren

Bot E Lawrence

2 ps	Bro Muslins	73 1/4 c	13	9 52
2 "	Sup "	Ditto 65	12 3/4	7 90
1 "	Apron Check	64 9/16	17	8 46
1 "	Red Licking	44 1/2	25	11 19
2 "	London Prints	56 = 25		14 00
1 "	Sub Ditto	Ditto 28 = 3 1/2		8 82
1 "	"	Ditto Ditto 28 = 3 1/2		8 82
1 "	"	Ditto Ditto 36 = 2 7/8		9 90
1 "	" Red	Ditto 31 = 19		5 89
1 "	" Green	Ditto 29 = 18 1/2		5 41
1 "	" D.R. Bro	Ditto 32 = 11 1/2		3 77
1 "	" Fancy	Ditto 34 = 11 1/2		3 91
1 "	" Furnitured	Check 20 = 28		5 60
1 "	" Stripe	Sattanett 12 87		10 50
1 "	Crimson Merino	15 95		14 25

1	"	Green Ditto	15	90	13	50
1	"	Bro Ditto	8 ¹ / ₄	72 ²	5	98
1	"	Green Blankets			7	50
1	"	" Ditto Ditto			7	00
1	ps	Pilot cloth	10 ¹ / ₂	170	17	85
2	3	Doz Merino Handkerfs		11.50	7	67
1	3	" Ditto Ditto		1875	6	25
1	3	" Ditto Ditto		1450	4	84
1	6	" Supr Ditto Supr Ditto		2100	3	50
1	"	Lat Suspenders			1	00
1	"	Blk Thread			1	00
2	"	Shoe Ditto		85	1	70
3	"	Grn Blk Horn Buttons		31		93
3	"	Wht Ditto Ditto		33		100
2	brs	Pearl Ditto		45		90
1	2	Doz Plain Bone Stocks		6¢		200
1	6	" Pleated Ditto Ditto		15¢		250
1	4	" Plain Satin Ditto		12¢		300
1	"	B. Blacking				100
1	"	Wafers				38
1	"	Curry Combs				87
1	"	Puff Do Horn				75
1	"	Ditto				38
1	"	Box Shaving Soap				80
1	2	" Inkstands		175		88
4	brs	Shoe Lacks		15		60
3	12	Doz Supr Penknives		5.50		230

	1/2	Doz Imp	Ditto	3.00	1 50
38	1/2	" "	Ditto	2.75	1 38
	2	Setts Desert Knives of fms	145	2	90
	2	" Large	Ditto Ditto	1.70	3 40
	1	" "	Ditto Ditto		1 68
	1/2	Doz Shoe Knives			2 55 05
	1/2	Doz Shoe Knives		1.12	56
	1/2	" Ditto	Ditto	80	40
	5/12	" Razors		4.50	1 88
	1/2	" Ditto		2.00	1 00
	5/12	" Large Compasses		6.50	2 70
	6	pr Ladies Mor shoes		62	3 75
	6	" Ditto Leather Do		65	3 90
	6	" Misses Lasting Do		45	2 70
	6	" Mens Leather Do		85	5 10
	12	" Boys Do Do		65	7 80
	6	" Do do do		70	4 20
	6	" Chies Cold Do		30	1 80
	6	" Ladies fine kid Do		115	6 90
	1/2	Doz Boys Seal Caps		8.00	4 00
	1/3	" Mens Do Do		10.50	3 50
	10	Yds Red Padding		40	4 00
	20	" Sull Duck		24	4 80
	5	M Percussion Caps		60	3 00
	1	Doz Duck Cambs		1.12	1 12
	1/4	" Mirror Looking Glasses		7.00	1 75
	1/4	" Ditto Ditto		5.00	1 25
	12	M 3 oz Sacks		9-	1 08
	1	Doz fine Combs	= = =	88	88
		amt	= = =	\$ 303.12	

54

Dr By Cash	200.00
Bal Due E.P.	103.12

Given March 5th 1839
 Mr James M Warren
 Bot Sampson Hunt & Co

Sampson Hunt & Co

Account

6	Setts ass'd Teas	55	3.30
2	Doz Plates Ea 88.112.120.130		9.03
1	Doz Bowls Ea 200.150.112		4.62
1/2	" Doz Jugs	100	50
3	Setts Doz Teas	30	90
1/2	Doz odd Tea Pots	7.00	3.50
1	" Mo Salls 150.1 pr Lamps 75		2.25
3	" Mo Cup Plates	50	1.50
1/2	" Lustre Jugs	300	150
2	" Cold Bowls Ea 200.100.75.63		8.75
1	" C C " " " 88.62.50		2.00
1	" Chambers art		4.00
20	Setts Pint Teas	25	5.00
3	Doz Eaga Plates Ea 65.60		3.75
3	Pr C C and Basins 45.60		1.80
1/2	Doz Toy Cans Ea 75 100		88
1/2	Cold Jugs Ea 650.450.300		7.00
	Recd Papt Crate		1.00
			<u>61.28</u>

Sampson Hunt & Co

Mr Volney Oder 104

60

Order from

J M Warren
to
Volney Oder

Sir will please let Mr White have that
Hundred Dollars which was sent to you to pay the amount
of Matthias Warren's Exon which was enclosed in
a letter and directed to you and by so doing you
will oblige

Sardisville May 18th 1841 Jas. M Warren

The Depositions filed in this case are as
follows to wit:

The Deposition of Isaac S Reed, Thomas C-
recraft, Andrew Wells, Eldridge Waller taken
at the Store house of Isaac S Reed & Co in the Village
of Sardis, County of Marion upon Friday the 6th
of August 1841

Deposition of
Andrew Wells

Andrew Wells aged about 24 years and first
duly sworn upon his being interrogated says
Question by Complainant - Did you carry an
order from Matthias Warren directed to Volney Oder
for some money, if so when and in whose hand
writing was the said order and for what sum?

Ans - I carried and presented to Volney Oder
Deputy Sheriff of Nicholas County an order in the
hand writing of James M Warren though signed
by Matthias Warren father of said James for one hundred
Dollars said order was dated the 18th day of May 1841
Said order was given me by the mother of James M Warren
on Sunday and I took it upon Monday to Oder, at her request
the money was paid me some days after the presentation

61 of the order, ~~by~~ ^{of} Oder.

Question Is the order Just shown you by me and upon which you have made the initials of your name in the hand writing of James M Warren

Ans. It is in the hand writing of James M Warren having seen him frequently write, and had a great deal of his writing in my possession

Question by some Did you see a letter in the hands of Oder, to whom you gave the order mentioned by you, in the hand writing of James M Warren if so what were its contents

Ans - I did see a letter from James M Warren to Oder stating that he had enclosed him thereon One Hundred Dollars which was to be applied by him in discharge of an execution in favor of Thomson against Matthias Warren Thomson having obtained a Judgement against the latter upon a note assigned by me to him and my Agency in this matter grew out of my anxiety, to see the Judgement paid

Question are you a Constable of Nicholas County and Iso - Do you know whether James M Warren has transferred a large number of accounts, and notes due him to others and if so when was said transfers made

Answer He did transfer some; not a very large number, the transfers were made to John M Reed and was made the 12th of May I speak only now

of those that have come to my hands for collection

62 Question by Defendants Do you know whether the second order named in the foregoing part of this Deposition was given by J M Warren at the request of Peyton White or not

Ans I heard Mr White say that he got the order at his own request from Mr Warren and had gotten it on Saturday the day before the first order was placed in my hands by Mrs Warren

Question Did you read the letter spoken of above

Ans I did not, but heard Mr O'Leary read the letter, and saw that it was in the hand writing of J M Warren I saw Mr White compared the letter with ^{the} order marked with the initials of my name, and all agreed it was in the hand writing of Warren

Question You speak of the transfer of some accounts by Mr Warren to John M Reed. Please say whether or not these accounts were placed in the hands of Mr Reed to secure him in a debt due from the firm of White and Warren to Reed

Answer I do not know that there was any debt due from White & Warren to Reed and I do not know for what purpose said transfers were made and further this Depoent saith not

Amicus Welles

Deposition of Also the Deposition of Isaac S Reed taken

Isaac Reed

at the same time and place and for the same purpose
of that of Wells.

This Deponent about years and first
duly sworn Depoeth and faith as follows
Question by Complainant are you acquainted
with James M Warren if so, have you seen him
write, is the account across which your name is
written and now shown you in the handwriting
of James M Warren

Ans I am acquainted with James M Warren
and have seen him write frequently and had his
hand writing in my possession and the account
across which my name is written and which
I make ^{part of} my Deposition is in the hand writing
of said Warren as I verily believe

Ans - Please examine the book now produced
by you having an indorment on the Back thereof
of "Bills of goods" and upon your name is written
and please state if the entries therein are not in the
hand writing of James M Warren

Ans I have examined said Book and
though some of them are a little different from
his hand writing yet I believe them all to be in his
hand writing

Questions by Defendants Do you know
for what purpose, the accounts spoken of in Mr
Wells Deposition as having been transferred to
John M Reed, were transferred?

64 Answer. I understood from all parties that is. from White, Warren and Reed, as well as others, that those accounts were transferred to John M. Reed by Mr Warren, to secure John M. Reed who had become security for some tobacco which had been obtained and brought to this place by Warren I dont know that White was then in partnership with Warren, but understood he was not. Previous to the delivery of the tobacco I had seen a notice of the dissolution of Partnership upon the ware house

Quest - by Complainant, How long before the notice of Dissolution was seen by you, had Warren moved from the house that was occupied by White & Warren as a Store in the Village of Saratov

Ans When Warren moved from the house occupied by White and Warren I cannot say but it was after the Dissolution

and further says nat

Isaac S Reed

Deposition of Elbridge Waller

Also the Deposition of Elbridge Waller taken at the same time and place and for the same purpose as the foregoing

Being first duly sworn upon being interrogated says

Quest by Complainant. State if you please whether James^m Warren sent to you

65 For some receipts for flour that had been delivered by you for him at Augusta and if so when

Ans I had delivered some flour for Mr Warren to Messrs Wells & Cleary at Augusta and about the latter part of May 1841 he sent for said Receipts by Mr Adamson to whom I gave them

Questions by Defendants Was Mr Adamson sent for the Receipts especially or had other business in the neighborhood

Ans Mr Adamson I think ^{had} other business in the neighborhood, and I do not suppose he came especially for the Receipts The flour had been delivered some time previously to this and Mr Warren ought to have had the receipts some time before he got them. The same day Mr Warren sent for the receipt, I obtained the last one from the Waggoner, who had kept it in possession some seven or eight days and further with not

Elbridge Waller

Deposition of Also the Deposition of Thomas Cracraft
Thomas Cracraft taken at the same time and place for the same purpose as the foregoing

This Deponent aged about - and being first duly sworn upon being interrogated as follows

66

110
Question by Complainant - Please state of James M Warren offered to sell you his house and lot and stocks of goods in Surcis if so when and upon what terms

Answer I proposed sometime in March or April 1841 to purchase of Warren his Store house and lot scales and Store, but he declined selling at that time. Sometime in the month of May between the 10th & 25th I again proposed through Lawson & Brown to purchase again: Brown agreed as my Agent to give him \$600 for Store house lot scales and give \$300 in Cash and \$300 in 6 months, to which terms he refused to accede unless I would also take the stocks of goods which he had then on hand and an invoice of which he had prepared I refused to take the goods, but some short time afterwards I came over to reduce the contract to writing and meeting him upon the Beach told him I was going to see him to close the Contract all except the goods, to which he replied that need not be in the way as he had disposed of nearly all the Goods. I never closed the Contract because I was told by a Gentleman not to purchase as the property ^{as it} was in jeopardy and that ^{I knew better} I have nothing to do with it.

Question by Defendant - Did the house and lot spoken of above belong to Mr Warren or to the firm of White & Warren?

111

67 Answer - to Mr Warren & Judge Mr White
never claimed to own it

Question by some. When you proposed through Mr
-Brown to buy the house, lot &c. and in your future
negotiations upon the subject was there any secrecy
observed upon the part of Mr Warren, and did he
manifest any anxiety to have the matter kept a secret
or any anxiety to sell

Answer - Mr Warren did not manifest any anxiety
to have the matter kept a secret. nor did he manifest
any anxiety to sell

Quest by some Did Mr White or not ever tell you that
if you would not buy the house and lot of Warren, and
would wait awhile, that he White would soon have the
property, and that you could then buy of him (White) upon
better terms than you were to get it from Warren

Ans - I was on my way to propose to Warren to buy the
house and lot and met White at Mr Reeds and told
him of my intention to buy and buy the property while
going from Reeds. White told me not to say any thing
about it. that he White wanted to get the property
himself and would try and get it to secure him in
a debt which he said Warren owed him and
that if he got it he would let me have it for \$50
less that I could get it from Warren. White
said that Warren had given him the refusal
in the sale of the property White sent me word in
a few days that he could not get the house and

lot from Warren. This took place in the early part of May last

68

Question by same - You say above that you were told by a gentleman not to purchase the property as it was in jeopardy, please say how long this was before the attachment was levied upon the property

Answer - I was told not to purchase by the gentleman alluded to, on Friday, and I think the attachment was levied on the next Monday

Question by Complainant - Before the conversation had between you and White as to his sale to you of the house, had you understood from Warren that what he would take for it - and Warren had before that time offered to put it into a common stock at \$500 but had never offered to sell it to me

And further saith not

Thomas B Cracraft

The Bill of goods referred to in the foregoing Deposition of Isaac S Reed is as follows to wit -

Bill of Goods	1838	Shannon & Co		
referred to	Nov 23	Thomas Poe's Bill	385	14
in Deposition	Dec 14	J M Warren's	281	11
"	"	E Fereman's	303	12
"	"	"	62	68
183	"	"	21	50
"	"	Arthur & Metcalfe's	45	96
"	"	Butter & Jackson	57	88

		J. Adams	18	84
		J. W. Johnston	20	88
		Cutter & Jackson	18	00
1839	Jan	N. Poyntz	10	06
1839	Jan 1 st	J. Armstrong & Co	\$12	06
	" 10	Cutter & Jackson	23	10
	" "	E. Furman	262	17
	" "	J. S. Franks	2	88
	" "	S. B. Owens	1	75
Jan 6		Geo B Reed	37	00
	"	B. Stevenson	52	00
Mar 16		" "	10	75
1839	Jan 28	Jno Armstrong	2	40
	Feb 22	Kirk Anderson & Co	10	15
	" "	Cutter & Jackson	39	04
	" "	" "	22	72
Mar 16		B. Stevenson	11	25
	" 5	Simpson & Hunt	61	28
	" "	Bill of Licking	52	62
Apr 23		Jno Taylor Cincinnati	966	10.
	" "	J. York	188	48
	" "	Kellog Wells & Ogden	22	25
	" "	J. W. Shepard	5	68
	" 27	E. Furman Mayeville	17	76
	" "	" " "	69	39
	" "	" " "	20	63
	" "	Arthur D. Metcalfe	9	90

		114	
		Butter & Jackson	23 47
66	1839	B Stevenson	64 25
70	Feb 23	E Furman Mayeville	64 29
	May 10	" "	193 70
	" 9	Arms & Metcalfe	31 85
	" "	J W Johnson	3 75
	Jan 10	" "	14 74
	" "	Arms & Metcalfe	19 25
	" "	Wm Payntz	23 44
	" "	E Furmans	140 66
	" "	L Collins	4 25
1839	Jan 20	Clarke & Ryan	10 00
	" 25	E Furman & Co	92 68
	" "	Arms & Metcalfe	34 61
	July 25	Edwin Furman & Co	11 37
	Aug		2439 48
	Aug 6	Spalding 1 Keg Tobacco	11 60
	" "	E Furman	20 22
	" "	"	1 50
	" "	W Johnson & Co	2 00
	" "	Arms & Metcalfe	33 00
	Sept 5	John Taylor Cincinnati	1160 81
	" 6	Sampson, Hunt & Co	42 27
	" 7	J W Johnson Mayeville	70 28
	" "	E Furman & Co	129 41
	" "	Arms & Metcalfe	113 91
	" 10	" "	78 18
	" "	Wm Payntz	26 50

MS-

Depositions of Jno M Reed, Charles =
Clarke and Daniel Demiston taken at the Clerk's
office of the Marion Circuit Court in the town of Wash-
-ington on Monday the 9th day of August 1841

Deposition The Deponent Daniel Demiston being of lawful age
of Daniel Demiston and first duly sworn deposeth and saith

Question by Complainant - Do you or not know that
I am credited on the Cash Books of White & Warren
with the amount of \$1347.62½ cent

Answer I do not recollect the exact amount of the
credit, which is given to White, in the Cash Books
but it is to the best of my recollection about the aforesaid
amount or \$1347.62½ c the credit is given in the Ledger
to White of \$1347.62½ cts

Question by Defendants Counsel In whose possessi-
on are the Cash Books and Ledger spoken of above

Answer. The Ledger and Cash Books were both in
the hands of Mr White when I saw them This was abo-
ut the 3rd or 4th day of the last May Term

Question by same What amount of credit is there
in favor of Mr Warren upon the Cash Books and
what amount upon the Ledger. Ans - I did not see
any in either Book in favor of Mr Warren

Question by same - What amount was White charged
with upon the Books of the firm

Ans - Mr White was charged with \$1355.95 and had
credits for \$121.31 on the Ledger in the account that
was kept against him I do know that this last item

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of credits (121.31) was not included in \$1347.52 spoken
of above. The credit in favor of Mr White for \$1347.52
was for capital invested in the firm

Question by Complainers Counsel

In whose hand writing were the Books of the firm
Kept

Ans They were kept in the hand writing of Mr Warren

Question by Defendant were the Books of the firm of
White and Warren which you say you examined last
May defaced or mutilated in any way

Ans - I do not know except from the circumstance
of seeing a credit of Capital advanced by Mr White
that the Books were those of the firm of White & Warren
I did not examine the books particularly, and did
not see that they were defaced or mutilated. They
were shown to me by Mr White with the view of acquain-
ting me with the state of accounts between Mr
White & ^{Mr} Warren. I knew at the time that they had
been in partnership in merchandizing, and that there
had been a difficulty between the parties & saw a char-
ge on the day books against Mr White in Mr Warren's
hand writing of loss on business, but not carried
out I did not see Mr Warren's individual account

And further Deponent saith
not

Daniel Donniston

Deposition of Also the Deposition of Charles Clarke
Charles Clarke taken at the same time & place and for the same
purpose purposes aforesaid -

Deponent being of lawful age and duly
sworn, deposes & says

I as Deputy Sheriff had executions against
in favor of Curtis & Metcalfe and also
the firm of White & Warren, in favor of J W
Johnston, and of the amount of the executions
Mr Payton White paid me the sum of \$18.92
after I had exhausted the property of James
- M. Warren. The money was made this spring
I also saw Mr Payton White hand Mr Warren
a hundred Dollars wth a year ago last May
a part of which was afterwards paid over to me
by Mr Warren in discharge of an Execution in
favor of Armstrong & Co against Mr Warren
and further saith not

Charles Clarke

Deposition of The Deposition of Ino McCarthy taken at the
Ino McCarthy Clerk's office of the Mason Circuit Court in the
town of Washington upon the 12th day of ~~May~~
August 1841

This Deponent being of lawful age & first
duly sworn upon being interrogated deposes
as follows

Question by Complainant Please state
if James M Warren ever told you upon what
terms he and Payton White had discovered their

Partnership in the Mercantile business in Searis
and if so state what those terms were

Answer Upon one occasion Warren told
me that he and White had dissolved or rather
that White had withdrawn from the establishment
and that he was then the owner of the concern
that he owned the Books and accounts and
had given White some five Hundred Dollars
for his share of the profits this took place
some time last fall a short time before he moved
to his new house it grew out of a conversation
about the prospects of Merchandising at Searis
and the ability of the neighborhood to sup-
-port a Store

Question by Defendants Attorney Is this
the whole of the conversation alluded to by you
if not what else was said by Warren in rela-
-tion to the business &c the terms of the dissolution
of the partnership between himself and White

Ans Mr Warren spoke of the neighbor-hood
-do making bad Debts and my recollection is
that White was to take a portion of the price
Warren was to give him for the profits in acco-
-unts and notes that were bad

Question by same - Was White to bear any
portion of the loss that might be found upon
winding up the establishment?

Ans I did not hear any thing of the sort

from Warren in the conversation alluded to
By came was anything said by Warren in
relation to the Capital which White had put
into the establishment the amount which White
was indebted either to Warren or the firm

Ans- I have no recollection that there was
Question by Complainant- Is there but one
Store house in Sardis?

Ans there is but one at this time At the time of
the conversation Warren was building a Store house
on the other side of the Street, since that time
Warren has removed to the new house built by him
The old Store House occupied by White &
Warren has been occupied by a family since
some time last fall. The new house built by
Warren is opposite or nearly so the old one
occupied by White & Warren

And further with me

John Mc Conthey

The Deposition of John Clay taken at the
office of John Davidson Esq in the town of
Carroll on the 26th day of April 1845

Deposition of This Deponent being of lawful age and first
John Clay duly sworn deponent and South

Question by Complainant Did you or not pay
One Hundred Dollars to James Warren on the
order of Payton White

Ans Some time in the year 1838 I as Deputy

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Sheriff of Nicholas County collected some-
thing over One Hundred Dollars from Archib-
ald & Leonard Mullican on a Execution in favor
of Payton White and paid One Hundred Dollars
of it to James Warren on an order given by Payton
White to said Warren for that purpose the money
was paid on the 10th of March 1839

And further this Deponent saith not
John Clay

Defendants Depositions

The Depositions of John Reed and others
taken at the house of John M Reed in County of
Mason and State of Kentucky, on the 29th of
April 1842

Deposition of The Deponent being of lawful age and first
John M Reed duly sworn Depoeth and saith

Quest - by Deft - What was the intention of the
assignment of those notes I assigned to you

Ans - They were assigned ^{over} to me to make me safe
as far as they would go for debts that I was responsi-
ble for you

By same - Can you tell how much is the amount
of the bad Debts belonging to the firm

Ans I cannot I know there is some several
Hundred Dollars that is worth nothing at this
time if ever they are

By same Did you ever understand from Mr
White that he was to sustain a part of those bad

Debits 121

Ans - I never did - and this Deponent further saith not

John M. Reed

Also the Deposition of James Englers taken at the same time and place and for the same Deposition of purposes contained in the Caption the Deponent ^{James Englers} being of lawful age and first duly sworn depose and saith

Question by Defendant - On the evening previous to taking the Books and papers out of the Store Did you hear Mr White say he was going to arbitrate the next day

Ans why sir there was something said about arbitration he said said White came into the Shop with his Book under his arm and said that he had come to a hard place now he could not settle at all they was to arbitrate it but he had locked the Desk and gone off

By same. Your understanding was this that we was arbitrate

Ans Yes I understood that from both of you By same Do you know that White early next day morning entered the store and took out Desk books and papers in my absence

Ans He Did sir I seed him taking out the Desk and suppose he took the papers

Quest by Complainant: at the same time

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Did I not say that Mr Warren had locked up the Desk and had gone off I did not know what he might do

Ans I think he told me had locked up the Desk and had gone off and he didn't know what he intended to do

By some whose Desk did you see me carrying off

Ans - I do not know you said it was yours
Quest by Defend Was it the same Desk that belonged to the store?

Ans I was the same one that was in the store
Quest by Compt - Is it not the same Desk that was used by White & Warren in the old home when occupied by the firm

Ans I do not know whether it was or not

And this Deponent further saith not
James Englar

Deposition of
Robt A Kenton

Also the Deposition of Robt A Carbon taken at the same place and time and for the same purpose stated in the Caption, the Deponent being of lawful age and first duly sworn Deponent and saith

Question by Deft - what was the conversation between yourself and Mr White concerning our settlement

Ans - It was but a very little a few words I think the day that Mr White had Mr -

Warrens property attached we were sitting down by the side of Mr Warrens Store House and I asked Mr White how near they came to settlement and he told me they came this near White glanced over the Debs accounts and I saw there was only about ten Dollars difference in the way they were settling then he picked up his book and said he would ^{not} settle and that way settling

Quest by Compet - Did I stay till I got through the conversation or was I called off

Ans why we had quit talking about it for a few moments I dont know whether there was any more to come or not - we look and saw Mr Warren coming up the road and then Mr White rose up and went to where Charley Clarke was

Quest by Complamant - I want to ask Mr Harbour if he has not had unkind feelings towards me for nine months or upwards

Ans I have had nothing against you as a citizen but I have thought very hard of him for not paying a Just debt - that I have earned by hard licks - I have nothing more against you than the nature of man would have in that case previous to this time nine months ^{we} were good friends at least I was

Quest by Defendaant. You have never entertain

-ed any malicious feelings toward Mr White
so as to injure him

Answer no I have not - I respected one as
much as the other previous to this as citizens for
what acquaintance I had with them men

Objection by Complainant - to the answer
Must by Complainant - when did you commu-
-icate the conversation we had against the Ware-
House of Mr Warren

Ans During the time you was riding to Washington
on the business and that was before Mr White and
me had any difference at all

And this Deponent further saith not

L. A. Harbour

The Deposition of Phillip G Hopkins taken at
the office of said Hopkins in the town of Eliza-
ville Fleming County on the 15th day of April
1844

Deposition of The Deponent being of lawful age and being
P G Hopkins first duly sworn deposes & saith

Quest by Defendant Did Payton White in
various conversations with you tell you that he
White had withdrawn all the Capital which
he claimed to have had in the firm of White &
Warren, if so please state the conversation
when it took place and what gave rise to
such conversation Ans I recollect that some
time ~~since~~ previous to the difficulty which took

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place between White & Warren I think some-
-time in the early part of the year 1841 Mr White
informed me he had withdrawn his whole
Capital and interest out of the Concern and
in consequence he believed Warren would be
unable to keep up his stock of goods he told
me this apparently in a confidential manner
and I think requested me to say nothing about
it. What gave rise to this conversation I
cannot particularly recollect at this time
By some Do you know anything about
White dealing with me in the Store during
your residence in Searis

Ans I saw White frequently purchas-
ing articles of Warren frequently by some one
of his family and to all appearance done all or
a greater part of his dealing with him. and
further the Deponent saith not

D G Hopkins

The Execution that issued in this case is as
follows. to wit:

Execution The Commonwealth of Kentucky, To the Sher-
iff of Mason County Greeting We Command
You that of the estate of James M Warren you
cause to be made the sum of fifteen hundred
and three Dollars and ninty six Cents which
Payton White late in our Mason Circuit
Court recovered against him for debt

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With interest thereon from the first day of December 1845, until paid also the sum of \$5743 which to the said White in the same Court was adjudged for his costs in that suit expended whereof he is convict as appears to us of record and that you have the same before the Judge of our said Court on the third Wednesday in July next to render to the said White the debt interest + cost aforesaid and have then there this writ Witness Samuel W Owens Clerk of our said Court. at the Court House in the City of Maysville this the 22nd day of May 1854 and in the 62nd year of the Commonwealth

S W Owens Clerk

This Execution issued on a Decree rendered at the October Term 1853

S W Owens Clerk

Sheriff's Return Come to hand May 22nd 1854 at 10 O'clock A.M. no property found

John S Wilson Deputy
for W B A Baker SMC

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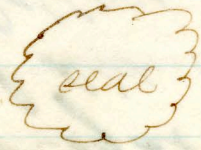
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State of Kentucky Mason Circuit Court Set
 I Samuel W Owens Clerk of the Court for said
 Circuit certify that the foregoing sixty eight
 pages contain a full true and complete transcript
 of the record and proceedings therein as the same
 remains — my office
 of whereof I have

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Herewith set my hand and
affixed the seal of the
Mason Circuit Court done
at the City of Maypsville
this 1st day of June 1854
Samuel W Owens Clerk
Mason Circuit Court



Copy of Record \$15.18

Seal & Seal 1.00

Charged to Comptroller \$16.18

S W Owens Clerk

State of Kentucky Set
I Alvin Duwall Judge of the
Mason Circuit Court in the State aforesaid
included within the 9th Judicial District of
Circuit Courts of said State, do hereby
Certify, that Samuel W Owens Esqr is and was
at the date of the foregoing Certificate, the Clerk
of the Mason Circuit Court aforesaid, and
that his certificate and attestation to the fore-
going transcript are in due form of law
Given under my hand this 3rd day of July
1854

A. Duwall

To the introduction of ~~which~~ said paper purporting to be a record as aforesaid the defendant then and there objected for the following reasons

- 1st For that there are many interlineations therein unexplained.
- 2nd That there are many unexplained alterations therein.
- 3^d That there are unexplained erasures and substitutions therein.
- 4th That there are two final decrees therein.

which objections were then and there overruled by the Court and said paper allowed to be read as evidence to the jury, to which ruling of the Court the defendant then and there objected.

Plaintiffs then offered to read in evidence Sections 101 & 106 of Chapter 83 entitled Interest and usury from the revised Statute of Kentucky which are in words and figures following to wit:

1. Legal interest shall be at the rate of six dollars upon one hundred Dollars for a year and that the same rate for a greater or less sum

for a longer or shorter time

6 " A Judgement except for malicious prosecution, Libel, Slander, or injury to the person, and a decree, shall bear legal interest from its date.

" A Judgement or decree may be for the principle and accrued interest: but if rendered for accruing interest: it shall bear interest only according to its terms."

" The defendant admitted the authenticity of the Books from which Plff proposed to read but objected to the evidence upon the ground that it was not pertinent to the issue in the cause. - Which objection the Court then and there overruled and allowed the same to be read as evidence. To which ruling of the Court the defendant then and there excepted. - The foregoing being all the evidence introduced by Plaintiffs to prove their issue they then and there closed their evidence

" The said defendant to prove the issues upon his part read as evidence a portion of the case of Labbott vs Doolea pages 458 of J D Marshall's Reports of the Decisions of the Court of Appeals of the State of Kentucky which is in the words & figures following to wit: so much of the Decree as directs the payment of the cost

and specified sums of money is clearly and indisputably final and this part of the decree tends to show that the Circuit Court understood the remaining part of it directing the partition to be final also. the decree is an unit and entire. is denominated on its face final. and directs the payment of the costs of the suit

" Defendant then offered to read as evidence a portion of the case of Books admr vs Love at pages 748 of 3d Dana's Reports of the Decisions of the Court of appeals of the State of Kentucky which is in the following words to wit: " It is well settled as a general rule that the Chancellor (except in cases especially provided for by Statute) cannot open or alter or reverse, a final decree, after the expiration of the term at which it was rendered unless upon Bill of review, or bill in the nature of a review, or Bill, or petition, impeaching the decree for fraud said defendant then read as evidence the case of Boss vs Boss pages 126 & 7 vol 2 A L Marshalls reports of the decisions of the Court of appeals of the State of Kentucky which is in the words and figures following to wit-

" This case presents a phenomenon in judicial proceedings

" The Bill claimed the conveyance of a lot of ground, and a settlement of accounts between

" At the November Term 1817. the Court rendered a decree completely final, dismissing the Complainant's Bill and decreeing the defendant's ~~his~~ Cost; on which decree an execution appears to have issued after the Term expired.

" No other proceedings appear to have been held until October Term 1818, when without any appearance of the parties another decree is entered in the same cause for the sum of \$1806.30 in favor of the Complainant. Together with his Cost to reverse which last decree this writ of error is prosecuted

" How such extraordinary proceedings should have taken place, cannot be told by the record. The latter decree must have happened by some undesigned mistake on the part of the Court arising from the negligence or improper acts of the Clerk or some of the parties. Be this as it may it is clear the power of the Court when it had rendered a final decree and discharged the parties at one Term and the Term had ended without further order ceased over the record and the latter decree is clearly erroneous if not irregular and void and must be reversed, and held for naught

" Defendant then read as evidence portions of the case of Field vs Ross pages 34, 35, 36 & 37 of vol

1. Monroe's reports of the decisions of the Court of appeals of the State of Kentucky which is in the words and figures following to wit - This Bill was filed on the 21st day of May 1810 and on the same day Warden Pope entered his appearance and admitted the Jurisdiction of the Court - and that he held the conveyance from Benjamin Pope for the purpose of satisfying said Judgement - first - and then another debt of £100, - to another individual, and also professed his readiness to see for the payment of the debt if the Court should so decree, Three days after this Bill was filed an order of publication was awarded against David Bars and Elizabeth Price

On the 8th of June following process of subpoena was awarded to the July Term following which was returned executed on Warden and William Pope: A proof was proanced at the next Term, that ^{the} order of ~~petition~~ publication had been inserted Eight successive weeks and the cause was continued

" At the next succeeding term in the month of November, the following decree was entered omitting its formal parts; and recital of service publication Etc It is ^{decreed and} ordered that the complainant recover against said executor the sum of £475, 10 s. the damages and Two hundred and Sixty pmas of Tobacco, and 16 s. C. D the costs for

Which Judgement in the bill mentioned was rendered, with interest on said £ 475.10 s at the rate of five per centum per annum from the 6th day of March in the year 1789. until the time of payment and the costs of him in this suit expended: and it is decreed and ordered that the four hundred acres, two thousand nine hundred and forty one acres and one thousand acres in the bill mentioned be sold at the Court House in Louisville on the second Monday in January next to the highest bidder at three months credit upon taking bond from the purchaser with good security for the payment of the purchase money payable to the Commissioner hereafter named or any two of them, to be applied to the discharge of this decree and the further order of this Court

" And it is further decreed and ordered that William, G. Simms, John Evans, and Henry Duncan or any two of them, be appointed Commissioners to make the sale aforesaid. And to carry this decree into effect And that they make report of their proceedings to next Court

" The Commissioners made report, to the next Court.

The Commissioners made report to the next term and at that term to wit on the 21st day of February 1811 the Court noticed the return of the report and approved thereof and directed a

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Credit for the amount to be entered on the former decree that the executor be acquitted from the amount made: That the defendants should convey to the Complainant, who was the purchaser

" And unless, these conveyances were made immediately that Commissioners should convey

" The conveyance was accordingly reported
An execution was directed for the residue

Whether the time was or was not set for the appearances of the petitioners, must depend essentially upon the inquiry, whether the decree which we have recited of December 1810 was or was not final or is that of February 1811 to be considered as the final decree? If the former the seven years allowed for an appearance by the Statute had expired: if the latter, the appearance offered and made was within the term of seven years by four or five days. Upon examination of the decree of 1810 it will be readily seen that it settled the whole controversy, the Court not excepted. It ascertained the Complainant's demand, and subjected the land to it by sale

" The sale it is true, was not executed; but this was only a ministerial act to effectuate what was decreed

" The propriety of treating decrees as interlocutory only, which leave only an act or acts to be done, to effectuate them was noticed

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By this Court in the case of Shelby and Roberts
vs Smith's Heirs and Executor. 2 Monr 504
and was decided to be final, in the cases of Lennie
vs Lennie 2 Litt Rep 258. and Watson vs Thomas
Lett S.C. 248

"The two last cases we deem in point, as
to the principle which ought here to govern and
they settle the matter, that this decree is final and
could not be reached by a petition and answer
and the decree of 1811 can only be deemed a decre-
tal order to Effectuate what the Court had before
determined. It has been urged, that the impos-
sibility of the first decree is apparent on its face

If so it must be left to revision by writ of
Error or bill of review, and not in the present form."

The Defendant then read as evidence a portion
of the case of Hynes vs Oldham 3rd Monroes reports
of the decisions of the Court of appeals of the State
of Kentucky at page 267 which is in the words
and figures following to wit: A decree may
be erroneous without being void and the legal
Effectuate of a decree which is merely erroneous
and one which is void is quite different. If a decree
be void it cannot conclude the rights of the parties
to it and it may be treated by them as well by all
others as a mere nullity; but if a decree be not
void however erroneous it may be it is not with-
standing binding upon the parties to it and their

privies, until it is reversed or set aside this distinction between the legal Effect of a void decree or judgement and of one which is merely erroneous, is founded in good reason and is sufficiently plain, but by what criteria we may distinguish one class of decree or Judgement from the other, is not so clear. It may, however, be laid down as a general rule that wherever the Court rendering the decree or judgement has not Jurisdiction or if rendered against a person in his absence without having the warning which the law requires the decree or judgement will be void."

The Defendant then read as evidence a portion of the revised Statutes of Kentucky in force July 1st 1852 from page 226. Chapter entitled Courts article 11 entitled Places and times of holding Circuit Courts" which is in the words and figures following to wit "North district" "In the County of Mason on the second Mondays of April and October and continue each, eighteen Judicial days"

"The defendant introduced Thomas H Smith as a witness who being sworn testified as follows to wit, "I have been acquainted with defendant Warren for a good many years, the first time I ever saw defendant was at Elizabethtown Hamilton County Illinois in 1847 or 1848 he was then residing there and has resided there ever

Since as far as I know:

Upon cross examination
witness testified as follows to wit

" I dont know how often defendant may have been in Kentucky or in Macon County since I first knew him and dont know that he has ever been there

" The foregoing is all the evidence introduced by either Plaintiffs or defendant in the trial of said Cause and upon this evidence the cause went to the Jury."

In the trial of said cause the Plaintiffs asked the Court to instruct the Jury as follows
Instructions of the Court to wit: 1st where a Court once obtains Jurisdiction over the person of a defendant by notice appearance or otherwise, such Jurisdiction will continue until the suit or proceedings is finally disposed of

2nd If you believe from the evidence that the Circuit Court of Macon County, Kentucky at October Term 1853 had Jurisdiction over the person of defendant Warren and over the subject matter in controversy and did render a final decree in favor of Dayton White against said defendant for \$1503.96 and that the same is reversed and in full force such decree was conclusive upon the parties and you should find for the Plaintiffs the

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Amount of said decree and such interest in the form of damages as the proof may show the plaintiffs entitled to under the laws of Kentucky" to which ruling,

If the Jury believe from the evidence that the decree of the Mason Circuit Court rendered at the November Term 1846, was not final but only interlocutory, and that the Court which rendered such interlocutory decree had Jurisdiction over the person of Defendant Warren by notice or appearance and if you further believe from the evidence that said Court - having Jurisdiction over Defendant Warren as aforesaid at the time of rendering said Interlocutory Decree continued said cause for the purpose of rendering a final Decree and that said final Decree was rendered at October Term 1853 of Mason Circuit Court - while the Court had Jurisdiction over the Defendant and the subject matter in controversy, such final Decree was conclusive upon the parties when the same was rendered and has the same force and effect in this State as it had at the time of its rendition in Kentucky

"To the giving of each of said Jurisdictions the said Defendant there and then objected

"The Court overruled the objections & gave the Instructions to the Jury to which ruling of the Court

the Defendant then & there excepted

" In the trial of said Cause the Defendant asked the Court to instruct the Jury as follows to wit: 1st that if the Jury believe from the evidence that there was intervening terms of the Mann County Circuit Court State of Kentucky held by said Court between the March Term 1847 of said Court and the time of the rendition of said decree sued on in this Cause to wit October Term 1853 and that no order of continuance or notice to the Defendant or otherwise given so as to continue said Cause regularly and continuously from the March Term 1847 to the October Term 1853 then in law the Defendant was not bound to answer further, and said decree so rendered at the October Term 1853 without appearance or notice then such last decree would be irregular and void and the Jury must find for Defendant

2nd

" The Court instructs the Jury that in a suit on the record of a Judgement or decree of a sister State if the record shows neither service of process, notice to the Defendant or an appearance by him the Judgement is a nullity when attempted to be enforced in this State the record not affording even a presumption in favor of Jurisdiction

3rd

" The Court instructs the Jury that a decree of a Court of Chancery which decides the rights of the parties and settles the amount due from one

Party to the other and awards an execution thereon is a final decree. And that if you believe from the evidence that the decree rendered at the November Term 1846 of the Mason Circuit Court was a final decree between the parties and that the decree rendered at the October Term 1853 of said Court was rendered without authority of the laws of the State of Kentucky the verdict should be for the defendant.

4th

"If the Jury believe from the evidence that the decree rendered at the November Term 1846 by the Mason Circuit Court against the defendant for the sum of \$1182.96 was made upon the Bill the answers depositions exhibits and Commissioners report and rendered a decree for \$1182.96 and awarded execution, that such a decree is a final decree and conclusive between the parties thereto."

Which said Instructions were each severally reported refused by the Court and the said Defendant then and there excepted to the ruling of the Court in refusing said instructions. Upon the trial of said cause the Court instructed the Jury at the request of the defendant as follows to wit:

"The Court instructs the Jury that if they believe from the evidence that the decree of said Mason Circuit Court rendered at the November

Term 1846 was tried by said Court after said
 Service of Summons and appearance of said War-
 ren and that said decree so rendered was final
 between the parties as to the amount due from
 Warren to White, and you further believe
 from the evidence that said decree according to
 the laws of the State of Kentucky could not be
 altered or disturbed except by some proceeding
 instituted in said Court for that purpose after due
 notice to or appearance of defendant Warren
 and that said decree of October 1853 sued upon
 was not so rendered but was rendered in violation
 of the laws of the State of Kentucky, and that
 said Warren had no notice of the intention of the
 Court to render such decree and did not appear
 thereto and that the Court rendering the same
 had no Jurisdiction over defendant Warren
 then the verdict of the Jury should be for defend-
 ant Warren

(Given)

The Court instructs the Jury that the Defendant
 in this cause has a right under the issues in this case
 to impeach the record offered in evidence by Plffs
 and show that the Court had no Jurisdiction over
 the person of defendant Warren or the subject
 matter of the suit. And if you believe from the
 evidence that the Circuit Court of Mason
 County Kentucky had no Jurisdiction over

the person of Defendant Warren ¹⁴⁴ when said decree
sued upon was rendered the verdict should be for
the defendant (Given)

" The Court instructs the
Jury that if they believe from the evidence that
the said Mason Circuit Court at the October Term
1853 had no Jurisdiction over the person of said
defendant Warren in the rendition of said decree
that the same is null and void and cannot be
enforced in this State and that your verdict
should be for defendant Warren (Given)

" The Court instructs the Jury that in determining
the question of Jurisdiction of said Mason Circuit
Court to render the decree of October Term 1853
You are to take into consideration all the evi-
dence bearing upon that point and if you believe
from all the evidence in the case that the decree of
November Term 1846 was final between the par-
ties and the Court rendering the decree at Oct-
ober Term 1853 had no Jurisdiction over deft-
then the decree sued upon is a nullity and cannot
be enforced against defendant Warren
and your verdict should be for said defend-
ant (Given)

" The Court instructs the Jury that in a suit
instituted on the record of a Judgement or decree
of a sister State if the question of Jurisdiction
of the Court rendering the decree is not in issue if the

Record shows neither service of process notice to the Defendant or an appearance by him and no jurisdiction by the Court over the person against whom the decree is rendered the Judgment is a nullity when attempted to be enforced in this State the record not affording even a presumption in favor of Jurisdiction {Given}

" That a Court having once rendered a final decree in a cause cannot legally alter or amend increase or diminish the amount of such decree at any other Term of the Court rendering the same so as to bind the defendant without his consent or notice served on the defendant, and that unless a Court of Law or equity has Jurisdiction of the person of the defendant no final decree passed by such Court will effect or prejudice him (Given)

" The Court instructs the Jury that if they believe from the evidence, that the said decree rendered by said ~~Warren~~ Mason Circuit Court at the November Term 1846 was final between the parties and that the same stands unrevoked and unaltered according to the laws of the State of Kentucky and that said decree issued on by plaintiffs was rendered in violation of the laws of the State of Kentucky without Jurisdiction over the person of said Defendant Warren then your verdict should be for the defendant Warren

(Given)

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Whereupon the Jury retired to consider of their verdict and returned a verdict in favor of Plaintiffs for \$1503.96 debt and \$1285.77 damages

Whereupon the defendant entered a motion for a new trial and in arrest of Judgment for the following causes to wit

- 1st "The Court erred in allowing the order granting administration to Plaintiffs to be read to the Jury
- 2nd The Court erred in allowing Plaintiffs to read said record in evidence to the Jury
- 3^d The Court erred in allowing Plaintiffs to read the Statute law of Kentucky in reference to interest to the Jury
- 4th The Court erred in giving the instructions asked for by Plffs to which defendant excepted, to the Jury
- 5th The Court erred in refused to give the instructions asked for by defendant
- 6th Because the verdict of the Jury was contrary to evidence
- 7th Because the verdict of the Jury was contrary to law and for other causes


The Court thereupon overruled said motion and entered Judgment in favor of Plaintiffs against defendant for the sum of \$1503.96 debt and 1285.77 damages in all \$2789.73

To which ruling of the Court the Defendant then

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and then excepted and prongs that this his
bill of exceptions may signed and sealed by the
Court which is done accordingly

And I do hereby certify that the foregoing
contains all the evidence taken in said cause
upon the trial thereof as well by Plffs as Defe-
ndant

William J. Allen 
Judge 26th Circuit

State of Illinois }
Williamson County } }

I Geo W Goddard
Clerk of the Circuit Court within
and for the County and State
aforesaid do hereby Certify that
the above and foregoing ^{147 pages} contains
a true and perfect record of the
proceedings in the above entitled
Cause as appear from the Books
& files of my office

In testimony whereof I have
hereunto subscribed my
name and affixed the
Seal of my office at office
in Marion this 16th day of
October AD 1860

Geo W Goddard Clerk

March Term Williams
Circuit Court 1860

John McCarthy &
Virginia White
Adm & Adm of
Payton White Dec
vs
James W Warm } Debt

Fil Record & Dock Suit 10	15
Ent appear self & atty 15	15
Fil 10 papers in prep of suit	50
Ent Dmv in order overul 20	40
" Order sustain post 20	20
" Leave to withdraw Dmv 20 Motion to stand off 20	40
Coll & swearing jury 15 Ent verdict 10	35
Mis for new trial 20 Order overruling 20	40
Ent Judgment 25 Work & food Cost bill 30	55
Jury & Dock fee	4 35
Making Record	28 80
Rec payment by J W Warm	\$ 36 05
	36 05
	0 00

I do hereby certify that the above
is a correct amount of the Cost in the
above styled Cause this Oct 16th 1860
G W G. J. J. J.

State of Illinois
Supreme Court,
James M. Warren
vs. Error to Milleman
John M. Carthy and
Virginia White administratrix
of Peyton White deceased

1st Grant
Decease,
November
Term 1860

And the said plaintiff comes and says that in the Record and proceedings aforesaid, also in the Rendition of the Judgment aforesaid, there is Manifest error in this Court,

1st The Court erred in allowing the Order granting administration to be read in evidence by the defendants.

2^d The Court erred in admitting the record of the Mason Circuit Court in evidence to the Jury,

3^d The Court erred in allowing the defendants to read the statute of Kentucky in reference to interest,

4th The Court erred in giving the instructions asked for by the Defendants.

5th The Court erred in refusing the 1st, 2^d, 3^d & 4th instructions asked for by the plaintiff.

6th The Court erred in not granting a new trial.

7th The Court erred in rendering up Judgment against the plaintiff,

8th The Court erred in sustaining the

defendants Demurr to the plaintiffs 2^d - 3^d & 5th pleas
of the the Court erred in not assisting
the judgment.

And the said James M Marrow prays that the
judgment aforesaid, for the errors aforesaid
and for other errors apparent on the Record
and proceedings aforesaid, may be reversed,
annulled and altogether held for nothing,
and that he may be restored to all things
which he has lost by reason of the said
judgment &c

W^m H. Underwood &
Jas M Marrow for
plaintiff in error

Fornden in Error
W^m H. Green.

Supreme Court—First Grand Division—State of Illinois.

JAMES M. WARREN, Plaintiff in Error,

vs.

} Error to Williamson.

JOHN MCCARTHY and VIRGINIA WHITE, Administrators of PAYTON WHITE, Deceased, Defendants in Error.

This is an action of debt on a decree of the Circuit Court of Mason county, in the State of Kentucky, in favor of ^{the} ~~the~~ ~~defendants in error~~, for \$1503 96 against the plaintiff in error, on the 26th day of October, 1853.

3-4. The declaration contains but one count. The defendant, James M. Warren, appeared and plead seven pleas.

17. 1st Plea—"Nultile record."

17-18. 2d Plea—The defendant says he does not own the said sum of money, and avers that the Circuit Court of Mason county, Kentucky, at the October Term, 1853, had no jurisdiction of the defendant, nor of the said supposed cause of action. Nor had said court any right, power, authority and jurisdiction to render said decree, because, theretofore, to-wit, at the November Term, 1846, of said Mason Circuit Court, a FINAL decree was entered upon the same identical cause of action upon due service of notice, issues and proofs—that, after the rendition of said final decree, in November, 1846, defendant had been, and still is, a resident of the State of Illinois, and had never since been in the State of Kentucky. No notice, actual or constructive, has ever since been given to, nor service of process had upon defendant in said cause. Nor has the defendant ever entered his appearance in said cause, nor authorized any attorney or other person to enter his appearance therein, or plead, answer or demur, nor to take any steps, action or proceeding therein, nor had he ever consented thereto in any manner whatever, which plea was demurred to by the plaintiffs and sustained by the court.

38. 19. 3d Plea—Says that the said White, in his lifetime, by his Bill in Chancery against defendant, in said Mason Circuit Court, Kentucky, for the same identical cause of action on which said supposed decree was rendered, and caused defendant to be duly served with process therein, to which said bill defendant appeared and put an answer, and the said White put his replication thereto, and issue made, and the parties proceeded to take proofs, and a master in chancery in said court made his report, upon reference being made to him, and such proceedings were had, that afterwards, at the November Term of said court, 1846, by the consideration of said court, the said White recovered of the defendant the sum of \$1182 96, and execution was awarded thereon, and avers that said decree was final and conclusive between the parties, and which remains in full force and in nowise annulled, reversed or set aside.—

20. That defendant has, ever since the rendition of said decree, been a citizen and resident of the State of Illinois, and has never since been in the State of Kentucky—that no writ or process whatever, wherein said defendant could have been summoned, either actually or constructively, of any other or further proceedings in said cause, has ever since been issued or served upon defendant, nor has he ever had any such notice, actual or constructive, of such intended proceedings—that he has never entered his appearance nor consented either in person nor by attorney, nor authorized any attorney or other person to enter his appearance or consent by plea, demur, answer or otherwise to any other or further or subsequent proceedings or further decree in said cause, at said October Term of said court, 1853, or other term whatever.—

21. That said decree for \$1503 96, supposed to be rendered at the October Term of said court, 1853, was not rendered by said court by virtue of any statu-

38. tory law of the State of Kentucky, or by virtue of any practice and proceedings of courts of chancery adopted in Kentucky or by virtue of any other law or practice adopted in said State—to which plea the plaintiff demurred, and the court sustained the demurrer.
22. 4th Plea—Avers that White, in his lifetime, by his bill in chancery against the defendant, in the circuit court of Mason county, Kentucky, for the same identical cause of action, on which said supposed decree was rendered, and caused defendant to be served with process therein, to which bill defendant appeared, put in answer, and the said White filed his replication thereto, and issue joined, and took proof, and the master in chancery of said court made his report, upon reference being made to him, that such proceedings were had, that, at the November Term of said court, 1846, by consideration of said court, said White recovered of the defendant the sum of \$1182 96, and execution was awarded thereon, that said decree, according to the laws of the State of Kentucky, was final and conclusive between the parties, and the same still remains in full force, nowise amended, reversed or set aside, that defendant has, ever since the rendition of said decree, been a citizen of the State of Illinois, and has never since been in the State of Kentucky—that no writ or process whatever, wherein defendant could have been summoned or notified, either actually or constructively, of any other or further proceedings in said cause, has ever since been issued or served on defendant, nor had he any such notice, actual or constructive, of such intended proceedings, that he never entered his appearance, nor consented, either in person nor by attorney, nor authorized any attorney or other person to enter his appearance or consent, by plea, demurrer, answer, or authorized any other or further or subsequent proceedings or further decree, at the October Term of said court, 1853, or other term whatever. That said supposed decree of the Mason circuit court, 1853, was rendered in the same identical cause of action as that rendered by said court, at the November term, 1846, for \$1182 96. That, according to the laws of the State of Kentucky, a decree which is final at one term of the court, and a subsequent decree at another term in the same cause is anomalous and void. The plaintiff demurred and the court overruled the demurrer, and the plaintiff replied and filed a general replication, upon which issue was joined.
23. 5th Plea—Avers that White, in his lifetime, by his bill in chancery against defendant, in the circuit of Mason county, Kentucky, for the same identical cause of action upon which said supposed decree was rendered, and caused said defendant to be served with process therein, to which said bill defendant appeared and answered, and White put in his replication thereto. Issue being joined therein, the parties proceeded to take proofs, and the master in chancery made his report upon reference being made to him, and such proceedings were had, that afterwards, at the November Term of said court, 1846, by consideration of said court, the said White recovered of the defendant the sum of \$1182 96 and execution awarded thereon—that said decree was final and conclusive between the parties, and the same remains in full force and in nowise annulled, reversed or set aside—that upon the rendition of said decree the powers and jurisdiction of said court became and was “FUNCTUS OFFICIO” in, by and under the laws of the State of Kentucky, as to the said cause of action and the said parties in that behalf—that he has, ever since the rendition of said decree, been a citizen and resident of the State of Illinois, and has never since been in the State of Kentucky. That no writ or process whatever, whereon said defendant could have been summoned or notified, either actually or constructively, of any other or further proceedings in said
- 24.
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27. cause, has ever since been issued or served upon defendant, nor has he ever had any such notice, actual or constructive, of such intended proceedings—that he never entered his appearance nor consented either in person or by attorney, nor authorized any attorney or other person to enter his appearance or consent, by plea, demurrer, answer or otherwise, to any other, further or subsequent proceedings or further decree in said cause, at the October Term of said court 1853, or other term whatever—to which plea the plaintiffs demurred, and the court sustained the demurrer.
38. 6th Plea—Avers that the plaintiffs were not, at the time of the commencement of this suit, administrators of the estate of White, deceased—to which the plaintiffs demurred, and the court overruled the demurrer, and the plaintiffs took issue on the plea.
27. 38. 7th Plea—Avers that White, in his lifetime, filed his bill in chancery in said Mason Circuit Court, Kentucky, against said defendant, and caused defendant to be served with process therein, to which said bill the defendant appeared and put in an answer, and the said White filed his replication thereto, that an issue was joined in said cause, that the parties took and filed there proofs in the cause, that said cause was referred to a commissioner who made his report in the cause to the court, that said cause came on to be tried upon all the proceedings had therein, at the November Term, 1846, of said court, said cause having been submitted to the court at the previous Term thereof. That, upon the hearing of said cause by the consideration of the court, said White recovered of the said defendant the sum of \$1182 96, and execution was awarded thereon and a commissioner appointed to execute said decree.—That at the time of the rendition of said decree, at the November Term, 1846, of said court, it was, and ever since that time has been, the law of Kentucky, that a decree of a court of chancery, which ascertains the complainants demand, and which renders a judgment therefor, and awards an execution thereon, is a final decree and directory only as to the execution of the decree, that said final decree cannot be opened, altered or revised after the expiration of the Term at which it was rendered, unless upon a bill of review, or a bill or petition impeaching the decree for fraud, and that where, at one term of the court a final decree is entered, and that term of the court expires without further order, opening, altering or reviewing such decree, and at a subsequent term of the court, without any appearance of the parties, another decree is entered in the same cause, it is irregular and void—that said decree rendered, at the November Term, 1846, of said Mason Circuit Court of Kentucky, according to the laws thereof, was final and conclusive between the parties. That said November Term, of said Mason circuit court, expired without any order being entered in said cause by said court, opening, altering or reviewing said decree, and that the same still remains in full force, and that no bill of review, bill or petition, impeaching said decree for fraud or any other cause, has been filed in said court, to open, alter or reverse said decree—that said decree has never been reversed, set aside or in anywise amended. That, at the October Term, 1853, of said court, in the same identical cause, in which said final decree was entered, at the November Term, 1846, of said court without any appearance of the parties in said cause, said Mason Circuit Court entered up another decree in said cause, which is the said supposed decree in said plaintiffs' declaration mentioned; that no writ or process whatever, whereon the defendant could have been summoned or notified, either actually or constructively, of any other proceedings in said cause, since the rendition of said first decree, at the November Term, 1846, of said court, has ever been
29. 30. 31.

issued or served upon said defendant, that he did not by himself, attorney or otherwise, plead, answer or demur, or by any other means, enter his appearance in said Mason circuit court, in said last mentioned proceeding by said court, held at said October Term, 1853, and that said last mentioned decree was rendered without the knowledge or consent of the defendant. That the decree rendered in 1853, according to the laws of Kentucky, is and was void; to which plea the plaintiffs demurred, and the court overruled the demurrer, and plaintiffs filed a general replication thereto, upon which issue was joined.

38. Whereupon a jury was impaneled, the issues and proofs submitted to the jury, who found the issue for the plaintiffs, and fix the debt at \$1503 96, and assessed their damages at \$1285 77, making \$2789 73 debt and damages. The defendant moves the court for a new trial and arrest of judgment, was overruled by the court. That the court then and there entered up judgment for \$2789 73 the debt and damages, &c.—to which the defendant excepted.

40. Thereupon the defendant filed his bill of exceptions, to-wit:

43. The plaintiffs, for the purpose of proving the issue, offered as evidence, a paper, purporting to be a true transcript from the records of the county court of Mason county, Kentucky, granting administration of the estate of Payton White, deceased, to the introduction of which the defendant objected. The court overruled the objection, and allowed the paper to be read to the jury, and the defendant excepted.

130. The plaintiffs then offered as evidence, a paper, purporting to be a record of a cause determined at the October Term, 1853, of the Mason circuit court, Kentucky, between Payton White, complainant, and James M. Warren and others, defendants—to the introduction of which record the defendant objected, for the following reasons.

1st, Because there were many interlineations therein unexplained.

2d, Because there are many unexplained alterations therein.

3d, Because there are unexplained erasures and substitutions therein.

4th, Because there are two final decrees therein.

Which objections were overruled by the court, and said paper allowed to be read as evidence to the jury, to which the defendant excepted.

That part of the record referred to, in the 4th exception, is found on pages 92 and 94.

The decree on page 92 is, in substance, as follows:

92. "At a court held as aforesaid, on the 25th of November, 1846.

This day this cause coming on upon the bill, the answers, exhibits and the depositions in the cause, and the commissioner having made his report in this cause, the court affirms said report, and now decrees that the said James M. Warren stands indebted to the said Payton White the sum of eleven hundred and eighty-two dollars and ninety six cents, which the court now decrees the said Warren to pay to the said Payton White, and the said White shall have execution for the same; and the court further decrees that the said Payton White has a right to a sale of the attached property to pay the same."

93. The court further decreed that James Clark be appointed commissioner to sell the attached property, or so much thereof as might be sufficient to pay COMPLAINANT HIS DEBT AND COST of this suit, including \$15 now allowed commission, and that he also audit the debts attached in this cause, and bear testimony and report the amount that may be now due to Warren by either of his debtors, and report the testimony to the court. And the cause was continued till the next Term.

93. "At a court held as aforesaid, on the 2d day of March, 1847, the commissioner James Clark, produced his report herein, which, having been examined and approved by the court, is ordered to be recorded as follows, to-wit:"
- The commissioner reports that he sold a house and lot in Jardis for \$205 to John McCarthy. That he notified White that he was prepared to audit the debts or claims on others, attached in this cause, and the said White failed to produce any evidence relative to said claims, and has none to return.—
94. The court then made the following order. "Ordered that James Clark retain the sum of fifteen dollars for his services as commissioner herein out of the sale bond executed to Payton White by John McCarthy and Edward L. Gault for the purchase money of the house and lot sold by him as commissioner."
94. "At a court held as aforesaid, on the 26th October, 1853," (from "1853" to the word "this," has been erased and over written).
- "This day this cause came on for final hearing (from the word "this" to "final hearing" has been erased and over written), and the court being sufficiently advised now decrees and orders that the commissioner, Marshall Key, has reported that James M. Warren stands indebted to the said Payton White in the sum of \$1708 96; on the 1st December, 1845, the said James M. Warren is entitled to a credit for the amount of the sale as reported by James Clark, the commissioner, amounting to \$205, the same shall be deducted from
95. the amount found due by the master commissioner, which would leave the sum of \$1503 96 due to the said White, with interest from 1st December, 1845. The court now decrees that the said James M. Warren pay to the said Payton White the sum of \$1503 96, with interest on the same from 1st day of December, 1845, until paid. And that the said Payton White have execution against James M. Warren for the said sum of \$1503 96, with interest on the same from 1st day of December, 1845, until paid. And the parties are hence dismissed without day."
130. The plaintiffs offered to read in evidence sections No. 1 and 6, of chapter 53, intitled interest and usury from the revised statute of Kentucky, which are in the words and figures following: "1st, Legal interest shall be at the rate of six dollars upon one hundred dollars for a year, and that the same rate for a greater or less sum for a longer or shorter time."
- "6th, A judgment, except for malicious prosecution, libel, slander or injury to the person, and a decree shall bear legal interest from its date. A judgment or decree may be for the principal and accrued interest; but, if rendered for accruing interest it shall bear interest according to its terms."
- The defendant admitted the authenticity of the book from which the plaintiffs proposed to read, but objected to the evidence upon the ground that it was not pertinent to the issue, which objection the court overruled and allowed the same to be read; and the defendant excepted.
- The foregoing is all the evidence produced on the part of the plaintiffs.
132. The defendant, to prove the issue upon his part, read a portion of the case of Tabbot vs. Toola, page 458, of J. J. Marshall's reports of the decisions of the court of appeals of the state of Kentucky, and reads as follows, to-wit:—"So much of the decree as directs the payment of the cost and specified sums of money is clearly and indisputably final, and this part of the decree tends to show that the circuit court understood the remaining part of it directing the partition to be final also. The decree is an unit and entire, and is denominated on its face final, and directs the payment of the cost of the suit."
- The defendant then offered a portion of the case, Book, adm'r, vs Love, at page 7 and 8, of 3d Dana reports of the court of appeals of Kentucky,

which reads as follows:

"It is a well settled as a general rule that the chancellor (except in cases provided by statute) cannot open or alter or reverse a final decree after the expiration of the term at which it was rendered, unless upon bill of review, or bill in the nature of a review, or bill or petition, impeaching the decree for fraud."

The defendant then read as evidence the case of Bobb vs. Bobb, pages 46 and 7, Vol 2, A. K. Marshall's reports of the court of appeals of the State of Kentucky, as follows:

133. "This cause presents a phenomena in judicial proceedings. The bill claimed the conveyance of a lot of ground, and a settlement of accounts between the parties. At the November Term, 1817, the court rendered a decree completely final, dismissing the complainant's bill, and decreeing the defendant his cost; on which decree an execution appears to have issued after the term expired. No other proceedings appear to have been held until October Term, 1818, when, without any appearance of the parties, another decree is entered in the same cause for the sum of \$1806 30 in favor of the complainant, together with his cost, to reverse which last decree this writ of error is prosecuted. How such extraordinary proceeding should have taken place, cannot be told by the record. The latter decree must have happened by some undesigned mistake on the part of the court, arising from the negligence or improper acts of the clerk or some of the parties. Be this as it may, it is clear the power of the court, when it had rendered a final decree and discharged the parties at one term, and the term had ended without further order, ceased over the record, and the latter decree is clearly erroneous, if not irregular and void, and must be reversed and held for naught."

134. The defendant read as evidence portions of the case of Field vs. Ross, 1st Monroe reports of Kentucky, pages 34-35-36-37:

"Field, on the 21st day of May, 1810, filed his bill, and on the same day Warden Pope entered his appearance and admitted the jurisdiction, and that he held the conveyance from Benjamin Pope for the purpose of satisfying a judgment and then another debt of £100 to another individual, and also professes his readiness to sell for the payment of the debt if the court should decree. Three days after the bill was filed, an order of publication was awarded against David Ross and Elizabeth Price. On the 8th June following process of subpoena was awarded to the July term following, which was returned executed on Warden and William Pope. Proof was produced at the next term, that the order of publication had been entered eight successive weeks, and the cause was continued. At the succeeding term the following decree was entered: It is decreed and ordered that the complainant recover against said executor the sum of £475 10 s. The damages two hundred and sixty pounds of tobacco, and 16 s. 6 d., the cost for which judgment in the bill mentioned was rendered with interest on said £475 10 s at the rate of five per cent per annum from the 6th day of March, 1789, until the time of payment and the cost expended; and it is decreed and ordered that the four hundred acres, two thousand acres in the bill mentioned, be sold at the court house in Louisville on the second Monday in January next, to the highest bidder, at three months credit, upon taking bond from the purchaser, with good security, for the payment of the purchase money payable to the commissioner hereafter named or any two of them to be applied to the discharge of this decree and further order of this court. And it is further decreed and ordered that William F. Simerall, John Evans and Duncan or any two of them be

135.

136. appointed commissioners to make the sale aforesaid, and carry this decree into effect, and that they make report of their proceedings to next court. The commissioners made their report to the next court, and that at that time, to-wit, 21st day February, 1811, the court noticed the returns of the report and approved thereof, and directed a credit for the amount to be entered on the former decree, that the executor be acquitted from the amount made, that the defendants should convey to the complainant who was then purchaser.

137. Whether the time was, or was not, out for the appearance of the parties, must depend essentially upon the enquiry whether the decree which we have recited of December, 1810, was or was not final; or is that of February 1811, to be considered as the final decree. If the former the seven years allowed for appearance by the statute had expired. If the latter, the appearance offered and made was within the time of seven years by four or five days. Upon examination of the decree of 1810, it will be readily seen that it settled the whole controversy, the cost not excepted. It ascertained the complainant's demand and subjected the land to it by sale. The sale it is true was not executed, but this was only a ministerial act to effectuate what was decreed. The propriety of treating decrees as interlocutory only, which leaves only an act to effectuate them, was noticed by this court in the case of Shelby and Roberts vs. Smith heirs &c., 2 Marsh 504, and was decided to be final in the case of Lane vs. Lane, 2 Litt Rep 258, and Watson vs. Thomas, Litt Sc 248. The two last causes are deemed in point as to the principal which ought here to govern, and they settled the matter, that this decree is final and could not be reached by a petition and answer, and the decree of 1811 can only be deemed a decretal order to effectuate what the court had before determined. It has been argued the impropriety of the first decree is apparent on its face. If so, it must be left to revision by writ of error, or a bill of review, and not in the present form."

138. The defendant read a portion of the case of Haynes vs. Oldham, 3 Monroe's reports of Kentucky, page 267. "A decree may be erroneous without being void, and the legal effect of a decree which is merely erroneous and one which is void is quite different. If a decree be void it cannot conclude the rights of the parties to it, and it may be treated by them as well by all others as a mere nullity; but if a decree be not void, however erroneous it may be, it is, notwithstanding, binding upon the parties to it and their privies until it is reversed or set aside. This distinction between the legal effect of a void decree or a judgment and of one which is merely erroneous is found in good reason, and is sufficiently plain, but by what CRITERIA we may distinguish one class of decrees or judgments from the other is not so clear. It may however be laid down as a general rule, that whenever the court rendering the decree or judgment HAS NOT JURISDICTION, or if rendered against a person in his absence, without having the WARNING which the law requires, the DECREE OR JUDGMENT will be VOID."

The defendant then read as evidence a portion of the revised statute of Kentucky in force, 1st January, 1852, from page 226, entitled courts and times of holding courts, "in the north district," "in the county of Mason on second Mondays of April and October, and continues eighteen judicial days."

139. The defendant then proved by Thomas H. Smith, that he had been acquainted with defendant; the first time he saw him was in 1847 or 1848. He was then residing in Elizabethtown, Hardin county, Illinois, and has resided there ever since as far as I know.

He did not know how often he may have been in Kentucky, or in Mason

county, since he first knew him, nor did he know that he has ever been there.

The evidence being concluded by both parties, the plaintiffs obtained from the court the following instructions, and to which the defendant excepted.

1st, "When a court once obtains jurisdiction over the person of a defendant by notice, appearance or otherwise, such jurisdiction will continue until the suit or proceedings is fully disposed of."

140. 2d, "If you believe, from the evidence, that the circuit court of Mason county, Kentucky, at October Term, 1853, had jurisdiction over the person of defendant, Warren, and over the subject matter in controversy, and did render a final decree in favor of Payton White, against said defendant, for \$1503 96, and that the same is unreversed and in full force, such decree was conclusive upon the parties, and you should find for the plaintiffs the amount of said decree and such interest in the form of damages as the proof may show the plaintiffs entitled to under the laws of Kentucky." "If the jury believe, from the evidence, that the decree of the Mason circuit court, rendered at the November Term, 1846, was not final, but only interlocutory, and that the court which rendered such interlocutory decree had jurisdiction over the person of defendant, Warren, by notice or appearance—and if you further believe, from the evidence, that said court having jurisdiction over defendant, Warren, as aforesaid, at the time of rendering said interlocutory decree, continued said cause for the purpose of rendering a final decree, and that said final decree was rendered at the October Term, 1853, of Mason circuit court, while the court had jurisdiction over the defendant and the subject matter in controversy, such final decree was conclusive upon the parties when the same was rendered and has the same force and effect in this State as it had at the time of its rendition in Kentucky," to the giving of each the defendant excepted.

The defendant then asked the court for the following instructions, which was refused:

1st, "If the jury believe, from the evidence, that there was intervening terms of the Mason circuit court, State of Kentucky, held by said court between the March Term, 1847, of said court and the time of the rendition of said decree made in this cause, to-wit, October Term, 1853, and that no order of continuance or notice to the defendant or otherwise, so as to continue said cause regularly and continually from March Term, 1847, to October Term, 1853, then in law the defendant was not bound to answer further, and said decree, so rendered, at the October Term, 1853, without appearance or notice, then such last decree would be irregular and void and the jury must find for the defendant."

2d, The court instructs the jury that, in a suit on the record of a judgment or decree of a sister state, if the record shows neither service of process, notice to the defendant, or an appearance by him, the judgment is a nullity when attempted to be enforced in this State, the record not offering even a presumption in favor of jurisdiction."

141. 3d, The court instructs the jury that a decree of a court of chancery, which decides the rights of the parties and settles the amount due from one party to the other, and awards an execution thereon, is a final decree; and that, if you believe, from the evidence, that the decree rendered at the November Term, 1846, of the Mason circuit court, was a final decree between the parties, and that the decree rendered at the October Term, 1853, of said court, was rendered without the authority of the laws of the state of Kentucky, the verdict should be for the defendant."

4th, If the jury believe, from the evidence, that the decree rendered at the November Term, 1846, by the Mason circuit court, against the defendant, for the sum of \$1182 96, was tried upon the bill, the answers, depositions, exhibits and commissioners' report, and rendered a decree for \$1182 96, and awarded an execution, that such decree is a final decree and conclusive between the parties thereto."

Said 4th and last instruction was refused by the court, and the defendant excepted.

146.

Whereupon the jury returned a verdict for \$1503 96 debt, and \$1285 77 damages, against the defendant. Thereupon the defendant moved the court for a new trial and arrest of judgment for the following reasons:

1st, The court erred in allowing the order, granting administration to the plaintiffs, to be read to the jury.

2d, The court erred in allowing plaintiffs to read said record in evidence to the jury.

3d, The court erred in allowing the plaintiffs to read the statute of Kentucky, in reference to interest, to the jury.

4th, The court erred in giving the instructions asked by the plaintiffs, to which the defendant excepted, to the jury.

5th, The court erred in refusing to give the instructions asked for by defendant.

6th, Because the verdict of the jury is contrary to the evidence.

7th, Because the verdict of the jury was contrary to law, and for other causes.

The court overruled said motion, and entered up judgment for \$1503 96 debt, and \$1285 77 damages—debt and damages \$2789 73—and the defendant excepted.

JAMES M. WARREN.

36-15
Warren

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H. H. H.

Defendant excepted.

JAMES M. WARREN.

30th and \$1282.77 damages—debt and damages \$2789 13—and the de-
The court overruled said motion, and entered up judgment for \$1903 00
damages.

1st. Because the verdict of the jury was contrary to law, and for other
reasons.

2nd. The court erred in refusing to give the instructions asked for by de-
fendant.

3rd. The court erred in giving the instructions asked by the plaintiffs, to-
wiz, in reference to interest to the jury.

3d. The court erred in allowing the plaintiffs to read the statute of Ken-
tucky, the jury.

3d. The court erred in allowing plaintiffs to read said record in evidence to
plaintiffs to be read to the jury.

1st. The court erred in allowing the order granting administration to the
for a new trial and arrest of judgment for the following reasons:

damages against the defendant. Therefore the defendant moved the court
148. Whereupon the jury rendered a verdict for \$1903 00 49c and \$1282 77
excepted.

2nd. 1st and last instructions was refused by the court and the defendant
awarded an execution, that such decree is a final decree and conclusive be-
tween the parties thereto.

exhibits and commissioners' report, and rendered a decree for \$1183 00 and
for the sum of \$1183 00, was tried upon the bill, the answers, depositions, and
the November Term, 1846, by the Mason circuit court against the defendant.

4th. If the jury believe from the evidence that the decree rendered at

The following errors are assigned upon the record:

- 1st, The court erred in allowing the order, granting administration to defendants, to go to the jury.
- 2d, The court erred in admitting the record in evidence to the jury.
- 3d, The court erred in allowing the defendants to read the statute of Kentucky in reference to interest.
- 4th, The court erred in giving the instructions asked for by defendants.
- 5th, The court erred in refusing to give the 1st, 2d, 3d and 4th instructions asked for by the plaintiff.
- 6th, The court erred in not granting a new trial.
- 7th, The court erred in rendering up the judgment against the plaintiff.

W. H. Underwood
JAMES M. WARREN.

.....
: J. W. EDWARDS, PRINTER, SHAWNEETOWN. :

The court erred in not arresting the judgment

The court erred in sustaining Demer to 2^d, 3^d & 5th Pleas

An action of debt cannot be sustained upon a decree in chancery of an other state, unless the decree has by the statute of that state the effect of a judgment at law & that fact should be averred and proved. Elliott on Ray 2^d Blackford 31. Hugh v. Higgs & Wheatons Rpts 697. - Buskirk v. Mulock 3^d Harrison 185.

Interest is not allowed by our statute on a foreign judgment. People Rev Stat 683. sec 2,

Interest should be averred & proved
3^d *St. Marshall Gay v. Pratt sub page*

Warren

Whites adm

.....
JAMES M. WARREN
.....

4th, The court erred in not granting a new trial

5th, The court erred in refusing to give the 1st, 2d, 3d and 4th instruc-

Kentucky in reference to interest.

3d, The court erred in allowing the defendants to read the statute of

defendants to go to the jury.

1st, The court erred in allowing the order granting administration to

The following errors are assigned upon the record:

[Faint, illegible handwritten text, likely bleed-through from the reverse side of the page.]

Supreme Court—First Grand Division—State of Illinois.

JAMES M. WARREN, Plaintiff in Error,

vs.

} Error to Williamson.

JOHN MCCARTHY and VIRGINIA WHITE, Administrators of PAYTON WHITE, Deceased, Defendants in Error.

This is an action of debt on a decree of the Circuit Court of Mason county, in the State of Kentucky, in favor of ^{Payton White} the defendants in error, for \$1503 96 against the plaintiff in error, on the 26th day of October, 1853. The declaration contains but one count. The defendant, James M. Warren, appeared and plead seven pleas.

3-4.

17.

1st Plea—"Nultile record."

17-18.

2d Plea—The defendant says he does not own the said sum of money, and avers that the Circuit Court of Mason county, Kentucky, at the October Term, 1853, had no jurisdiction of the defendant, nor of the said supposed cause of action. Nor had said court any right, power, authority and jurisdiction to render said decree, because, theretofore, to-wit, at the November Term, 1846, of said Mason Circuit Court, a FINAL decree was entered upon the same identical cause of action upon due service of notice, issues and proofs—that, after the rendition of said final decree, in November, 1846, defendant had been, and still is, a resident of the State of Illinois, and had never since been in the State of Kentucky. No notice, actual or constructive, has ever since been given to, nor service of process had upon defendant in said cause. Nor has the defendant ever entered his appearance in said cause, nor authorized any attorney or other person to enter his appearance therein, or plead, answer or demur, nor to take any steps, action or proceeding therein, nor had he ever consented thereto in any manner whatever, which plea was demurred to by the plaintiffs and sustained by the court.

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19.

3d Plea—Says that the said White, in his lifetime, by his Bill in Chancery against defendant, in said Mason Circuit Court, Kentucky, for the same identical cause of action on which said supposed decree was rendered, and caused defendant to be duly served with process therein, to which said bill defendant appeared and put an answer, and the said White put his replication thereto, and issue made, and the parties proceeded to take proofs, and a master in chancery in said court made his report, upon reference being made to him, and such proceedings were had, that afterwards, at the November Term of said court, 1846, by the consideration of said court, the said White recovered of the defendant the sum of \$1182 96, and execution was awarded thereon, and avers that said decree was final and conclusive between the parties, and which remains in full force and in nowise annulled, reversed or set aside.—That defendant has, ever since the rendition of said decree, been a citizen and resident of the State of Illinois, and has never since been in the State of Kentucky—that no writ or process whatever, wherein said defendant could have been summoned, either actually or constructively, of any other or further proceedings in said cause, has ever since been issued or served upon defendant, nor has he ever had any such notice, actual or constructive, of such intended proceedings—that he has never entered his appearance nor consented either in person nor by attorney, nor authorized any attorney or other person to enter his appearance or consent by plea, demur, answer or otherwise to any other or further or subsequent proceedings or further decree in said cause, at said October Term of said court, 1853, or other term whatever.—That said decree for \$1503 96, supposed to be rendered at the October Term of said court, 1853, was not rendered by said court by virtue of any statu-

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38. tory law of the State of Kentucky, or by virtue of any practice and proceedings of courts of chancery adopted in Kentucky or by virtue of any other law or practice adopted in said State—to which plea the plaintiff demurred, and the court sustained the demurrer.
22. 4th Plea—Avers that White, in his lifetime, by his bill in chancery against the defendant, in the circuit court of Mason county, Kentucky, for the same identical cause of action, on which said supposed decree was rendered, and caused defendant to be served with process therein, to which bill defendant appeared, put in answer, and the said White filed his replication thereto, and issue joined, and took proof, and the master in chancery of said court made his report, upon reference being made to him, that such proceedings were had, that, at the November Term of said court, 1846, by consideration of said court, said White recovered of the defendant the sum of \$1182 96, and execution was awarded thereon, that said decree, according to the laws of the State of Kentucky, was final and conclusive between the parties, and the same still remains in full force, nowise amended, reversed or set aside, that defendant has, ever since the rendition of said decree, been a citizen of the State of Illinois, and has never since been in the State of Kentucky—that no writ or process whatever, wherein defendant could have been summoned or notified, either actually or constructively, of any other or further proceedings in said cause, has ever since been issued or served on defendant, nor had he any such notice, actual or constructive, of such intended proceedings, that he never entered his appearance, nor consented, either in person nor by attorney, nor authorized any attorney or other person to enter his appearance or consent, by plea, demurrer, answer, or authorized any other or further or subsequent proceedings or further decree, at the October Term of said court, 1853, or other term whatever. That said supposed decree of the Mason circuit court, 1853, was rendered in the same identical cause of action as that rendered by said court, at the November term, 1846, for \$1182 96. That, according to the laws of the State of Kentucky, a decree which is final at one term of the court, and a subsequent decree at another term in the same cause is anomalous and void. The plaintiff demurred and the court overruled the demurrer, and the plaintiff replied and filed a general replication, upon which issue was joined.
23. 5th Plea—Avers that White, in his lifetime, by his bill in chancery against defendant, in the circuit of Mason county, Kentucky, for the same identical cause of action upon which said supposed decree was rendered, and caused said defendant to be served with process therein, to which said bill defendant appeared and answered, and White put in his replication thereto. Issue being joined therein, the parties proceeded to take proofs, and the master in chancery made his report upon reference being made to him, and such proceedings were had, that afterwards, at the November Term of said court, 1846, by consideration of said court, the said White recovered of the defendant the sum of \$1182 96 and execution awarded thereon—that said decree was final and conclusive between the parties, and the same remains in full force and in nowise annulled, reversed or set aside—that upon the rendition of said decree the powers and jurisdiction of said court became and was “FUNCTUS OFFICIO” in, by and under the laws of the State of Kentucky, as to the said cause of action and the said parties in that behalf—that he has, ever since the rendition of said decree, been a citizen and resident of the State of Illinois, and has never since been in the State of Kentucky. That no writ or process whatever, whereon said defendant could have been summoned or notified, either actually or constructively, of any other or further proceedings in said
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27. cause, has ever since been issued or served upon defendant, nor has he ever had any such notice, actual or constructive, of such intended proceedings—that he never entered his appearance nor consented either in person or by attorney, nor authorized any attorney or other person to enter his appearance or consent, by plea, demurrer, answer or otherwise, to any other, further or subsequent proceedings or further decree in said cause, at the October Term of said court 1853, or other term whatever—to which plea the plaintiffs demurred, and the court sustained the demurrer.
38. 6th Plea—Avers that the plaintiffs were not, at the time of the commencement of this suit, administrators of the estate of White, deceased—to which the plaintiffs demurred, and the court overruled the demurrer, and the plaintiffs took issue on the plea.
27. 28. 7th Plea—Avers that White, in his lifetime, filed his bill in chancery in said Mason Circuit Court, Kentucky, against said defendant, and caused defendant to be served with process therein, to which said bill the defendant appeared and put in an answer, and the said White filed his replication thereto, that an issue was joined in said cause, that the parties took and filed there proofs in the cause, that said cause was referred to a commissioner who made his report in the cause to the court, that said cause came on to be tried upon all the proceedings had therein, at the November Term, 1846, of said court, said cause having been submitted to the court at the previous Term thereof.
29. That, upon the hearing of said cause by the consideration of the court, said White recovered of the said defendant the sum of \$1182 96, and execution was awarded thereon and a commissioner appointed to execute said decree.—That at the time of the rendition of said decree, at the November Term, 1846, of said court, it was, and ever since that time has been, the law of Kentucky, that a decree of a court of chancery, which ascertains the complainants demand, and which renders a judgment therefor, and awards an execution thereon, is a final decree and directory only as to the execution of the decree, that said final decree cannot be opened, altered or revised after the expiration of the Term at which it was rendered, unless upon a bill of review, or a bill or petition impeaching the decree for fraud, and that where, at one term of the court a final decree is entered, and that term of the court expires without further order, opening, altering or reviewing such decree, and at a subsequent term of the court, without any appearance of the parties, another decree is entered in the same cause, it is irregular and void—that said decree rendered, at the November Term, 1846, of said Mason Circuit Court of Kentucky, according to the laws thereof, was final and conclusive between the parties. That said November Term, of said Mason circuit court, expired without any order being entered in said cause by said court, opening, altering or reviewing said decree, and that the same still remains in full force, and that no bill of review, bill or petition, impeaching said decree for fraud or any other cause, has been filed in said court, to open, alter or reverse said decree—that said decree has never been reversed, set aside or in anywise amended. That, at the October Term, 1853, of said court, in the same identical cause, in which said final decree was entered, at the November Term, 1846, of said court without any appearance of the parties in said cause, said Mason Circuit Court entered up another decree in said cause, which is the said supposed decree in said plaintiffs' declaration mentioned; that no writ or process whatever, whereon the defendant could have been summoned or notified, either actually or constructively, of any other proceedings in said cause, since the rendition of said first decree, at the November Term, 1846, of said court, has ever been
30. 31.

issued or served upon said defendant, that he did not by himself, attorney or otherwise, plead, answer or demur, or by any other means, enter his appearance in said Mason circuit court, in said last mentioned proceeding by said court, held at said October Term, 1853, and that said last mentioned decree was rendered without the knowledge or consent of the defendant. That the decree rendered in 1853, according to the laws of Kentucky, is and was void; to which plea the plaintiffs demurred, and the court overruled the demurrer, and plaintiffs filed a general replication thereto, upon which issue was joined.

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Whereupon a jury was impaneled, the issues and proofs submitted to the jury, who found the issue for the plaintiffs, and fix the debt at \$1503 96, and assessed their damages at \$1285 77, making \$2789 73 debt and damages. The defendant moves the court for a new trial and arrest of judgment, was overruled by the court. That the court then and there entered up judgment for \$2789 73 the debt and damages, &c.—to which the defendant excepted.

40.

Thereupon the defendant filed his bill of exceptions, to-wit:

The plaintiffs, for the purpose of proving the issue, offered as evidence, a paper, purporting to be a true transcript from the records of the county court of Mason county, Kentucky, granting administration of the estate of Payton White, deceased, to the introduction of which the defendant objected. The court overruled the objection, and allowed the paper to be read to the jury, and the defendant excepted.

43.

The plaintiffs then offered as evidence, a paper, purporting to be a record of a cause determined at the October Term, 1853, of the Mason circuit court, Kentucky, between Payton White, complainant, and James M. Warren and others, defendants—to the introduction of which record the defendant objected, for the following reasons.

130.

1st, Because there were many interlineations therein unexplained.

2d, Because there are many unexplained alterations therein.

3d, Because there are unexplained erasures and substitutions therein.

4th, Because there are two final decrees therein.

Which objections were overruled by the court, and said paper allowed to be read as evidence to the jury, to which the defendant excepted.

That part of the record referred to, in the 4th exception, is found on pages 92 and 94.

The decree on page 92 is, in substance, as follows:

92.

“At a court held as aforesaid, on the 25th of November, 1846.

This day this cause coming on upon the bill, the answers, exhibits and the depositions in the cause, and the commissioner having made his report in this cause, the court affirms said report, and now decrees that the said James M. Warren stands indebted to the said Payton White the sum of eleven hundred and eighty-two dollars and ninety six cents, which the court now decrees the said Warren to pay to the said Payton White, and the said White shall have execution for the same; and the court further decrees that the said Payton White has a right to a sale of the attached property to pay the same.”

93.

The court further decreed that James Clark be appointed commissioner to sell the attached property, or so much thereof as might be sufficient to pay COMPLAINANT HIS DEBT AND COST of this suit, including \$15 now allowed commission, and that he also audit the debts attached in this cause, and bear testimony and report the amount that may be now due to Warren by either of his debtors, and report the testimony to the court. And the cause was continued till the next Term.

93. "At a court held as aforesaid, on the 2d day of March, 1847, the commissioner James Clark, produced his report herein, which, having been examined and approved by the court, is ordered to be recorded as follows, to-wit:"
- The commissioner reports that he sold a house and lot in Jardis for \$205 to John McCarthy. That he notified White that he was prepared to audit the debts or claims on others, attached in this cause, and the said White failed to produce any evidence relative to said claims, and has none to return.—
94. The court then made the following order. "Ordered that James Clark retain the sum of fifteen dollars for his services as commissioner herein out of the sale bond executed to Payton White by John McCarthy and Edward L. Gault for the purchase money of the house and lot sold by him as commissioner."
94. "At a court held as aforesaid, on the 26th October, 1853," (from "1853" to the word "this," has been erased and over written).
- "This day this cause came on for final hearing (from the word "this" to "final hearing" has been erased and over written), and the court being sufficiently advised now decrees and orders that the commissioner, Marshall Key, has reported that James M. Warren stands indebted to the said Payton White in the sum of \$1708 96; on the 1st December, 1845, the said James M. Warren is entitled to a credit for the amount of the sale as reported by James Clark, the commissioner, amounting to \$205, the same shall be deducted from the amount found due by the master commissioner, which would leave the sum of \$1503 96 due to the said White, with interest from 1st December, 1845. The court now decrees that the said James M. Warren pay to the said Payton White the sum of \$1503 96, with interest on the same from 1st day of December, 1845, until paid. And that the said Payton White have execution against James M. Warren for the said sum of \$1503 96, with interest on the same from 1st day of December, 1845, until paid. And the parties are hence dismissed without day."
95. The plaintiffs offered to read in evidence sections No. 1 and 6, of chapter 53, intituled interest and usury from the revised statute of Kentucky, which are in the words and figures following: "1st, Legal interest shall be at the rate of six dollars upon one hundred dollars for a year, and that the same rate for a greater or less sum for a longer or shorter time."
- "6th, A judgment, except for malicious prosecution, libel, slander or injury to the person, and a decree shall bear legal interest from its date. A judgment or decree may be for the principal and accrued interest; but, if rendered for accruing interest it shall bear interest according to its terms."
- The defendant admitted the authenticity of the book from which the plaintiffs proposed to read, but objected to the evidence upon the ground that it was not pertinent to the issue, which objection the court overruled and allowed the same to be read; and the defendant excepted.
- The foregoing is all the evidence produced on the part of the plaintiffs.
132. The defendant, to prove the issue upon his part, read a portion of the case of Tabbot vs. Toola, page 458, of J. J. Marshall's reports of the decisions of the court of appeals of the state of Kentucky, and reads as follows, to-wit:—"So much of the decree as directs the payment of the cost and specified sums of money is clearly and indisputably final, and this part of the decree tends to show that the circuit court understood the remaining part of it directing the partition to be final also. The decree is an unit and entire, and is denominated on its face final, and directs the payment of the cost of the suit."
- The defendant then offered a portion of the case, Book, adm'r, vs Love, at page 7 and 8, of 3d Dana reports of the court of appeals of Kentucky,

which reads as follows:

"It is a well settled as a general rule that the chancellor (except in cases provided by statute) cannot open or alter or reverse a final decree after the expiration of the term at which it was rendered, unless upon bill of review, or bill in the nature of a review, or bill or petition, impeaching the decree for fraud."

The defendant then read as evidence the case of Bobb vs. Bobb, pages 46 and 7, Vol 2, A. K. Marshall's reports of the court of appeals of the State of Kentucky, as follows:

133. "This cause presents a phenomena in judicial proceedings. The bill claimed the conveyance of a lot of ground, and a settlement of accounts between the parties. At the November Term, 1817, the court rendered a decree completely final, dismissing the complainant's bill, and decreeing the defendant his cost; on which decree an execution appears to have issued after the term expired. No other proceedings appear to have been held until October Term, 1818, when, without any appearance of the parties, another decree is entered in the same cause for the sum of \$1806 30 in favor of the complainant, together with his cost, to reverse which last decree this writ of error is prosecuted. How such extraordinary proceeding should have taken place, cannot be told by the record. The latter decree must have happened by some undesigned mistake on the part of the court, arising from the negligence or improper acts of the clerk or some of the parties. Be this as it may, it is clear the power of the court, when it had rendered a final decree and discharged the parties at one term, and the term had ended without further order, ceased over the record, and the latter decree is clearly erroneous, if not irregular and void, and must be reversed and held for naught."

134. The defendant read as evidence portions of the case of Field vs. Ross, 1st Monroe reports of Kentucky, pages 34-35-36-37:

135. "Field, on the 21st day of May, 1810, filed his bill, and on the same day Warden Pope entered his appearance and admitted the jurisdiction, and that he held the conveyance from Benjamin Pope for the purpose of satisfying a judgment and then another debt of £100 to another individual, and also professes his readiness to sell for the payment of the debt if the court should decree. Three days after the bill was filed, an order of publication was awarded against David Ross and Elizabeth Price. On the 8th June following process of subpoena was awarded to the July term following, which was returned executed on Warden and William Pope. Proof was produced at the next term, that the order of publication had been entered eight successive weeks, and the cause was continued. At the succeeding term the following decree was entered: It is decreed and ordered that the complainant recover against said executor the sum of £475 10 s. The damages two hundred and sixty pounds of tobacco, and 16 s. 6 d., the cost for which judgment in the bill mentioned was rendered with interest on said £475 10 s at the rate of five per cent per annum from the 6th day of March, 1789, until the time of payment and the cost expended; and it is decreed and ordered that the four hundred acres, two thousand acres in the bill mentioned, be sold at the court house in Louisville on the second Monday in January next, to the highest bidder, at three months credit, upon taking bond from the purchaser, with good security, for the payment of the purchase money payable to the commissioner hereafter named or any two of them to be applied to the discharge of this decree and further order of this court. And it is further decreed and ordered that William F. Simerall, John Evans and Duncan or any two of them be

136. appointed commissioners to make the sale aforesaid, and carry this decree into effect, and that they make report of their proceedings to next court. The commissioners made their report to the next court, and that at that time, to-wit, 21st day February, 1811, the court noticed the returns of the report and approved thereof, and directed a credit for the amount to be entered on the former decree, that the executor be acquitted from the amount made, that the defendants should convey to the complainant who was then purchaser.

137. Whether the time was, or was not, out for the appearance of the parties, must depend essentially upon the enquiry whether the decree which we have recited of December, 1810, was or was not final; or is that of February 1811, to be considered as the final decree. If the former the seven years allowed for appearance by the statute had expired. If the latter, the appearance offered and made was within the time of seven years by four or five days. Upon examination of the decree of 1810, it will be readily seen that it settled the whole controversy, the cost not excepted. It ascertained the complainant's demand and subjected the land to it by sale. The sale it is true was not executed, but this was only a ministerial act to effectuate what was decreed. The propriety of treating decrees as interlocutory only, which leaves only an act to effectuate them, was noticed by this court in the case of *Shelby and Roberts vs. Smith heirs &c.*, 2 Marsh 504, and was decided to be final in the case of *Lane vs. Lane*, 2 Litt Rep 258, and *Watson vs. Thomas*, Litt Sc 248. The two last causes are deemed in point as to the principal which ought here to govern, and they settled the matter, that this decree is final and could not be reached by a petition and answer, and the decree of 1811 can only be deemed a decretal order to effectuate what the court had before determined. It has been argued the impropriety of the first decree is apparent on its face. If so, it must be left to revision by writ of error, or a bill of review, and not in the present form."

138. The defendant read a portion of the case of *Haynes vs. Oldham*, 3 Monroe's reports of Kentucky, page 267. "A decree may be erroneous without being void, and the legal effect of a decree which is merely erroneous and one which is void is quite different. If a decree be void it cannot conclude the rights of the parties to it, and it may be treated by them as well by all others as a mere nullity; but if a decree be not void, however erroneous it may be, it is, notwithstanding, binding upon the parties to it and their privies until it is reversed or set aside. This distinction between the legal effect of a void decree or a judgment and of one which is merely erroneous is found in good reason, and is sufficiently plain, but by what CRITERIA we may distinguish one class of decrees or judgments from the other is not so clear. It may however be laid down as a general rule, that whenever the court rendering the decree or judgment HAS NOT JURISDICTION, or if rendered against a person in his absence, without having the WARNING which the law requires, the DECREE OR JUDGMENT will be VOID."

The defendant then read as evidence a portion of the revised statute of Kentucky in force, 1st January, 1852, from page 226, entitled courts and times of holding courts, "in the north district," "in the county of Mason on second Mondays of April and October, and continues eighteen judicial days."

139. The defendant then proved by Thomas H. Smith, that he had been acquainted with defendant; the first time he saw him was in 1847 or 1848. He was then residing in Elizabethtown, Hardin county, Illinois, and has resided there ever since as far as I know.

He did not know how often he may have been in Kentucky, or in Mason

county, since he first knew him, nor did he know that he has ever been there.

The evidence being concluded by both parties, the plaintiffs obtained from the court the following instructions, and to which the defendant excepted.

1st, "When a court once obtains jurisdiction over the person of a defendant by notice, appearance or otherwise, such jurisdiction will continue until the suit or proceedings is fully disposed of."

140.

2d, "If you believe, from the evidence, that the circuit court of Mason county, Kentucky, at October Term, 1853, had jurisdiction over the person of defendant, Warren, and over the subject matter in controversy, and did render a final decree in favor of Payton White, against said defendant, for \$1503 96, and that the same is unreversed and in full force, such decree was conclusive upon the parties, and you should find for the plaintiffs the amount of said decree and such interest in the form of damages as the proof may show the plaintiffs entitled to under the laws of Kentucky." "If the jury believe, from the evidence, that the decree of the Mason circuit court, rendered at the November Term, 1846, was not final, but only interlocutory, and that the court which rendered such interlocutory decree had jurisdiction over the person of defendant, Warren, by notice or appearance—and if you further believe, from the evidence, that said court having jurisdiction over defendant, Warren, as aforesaid, at the time of rendering said interlocutory decree, continued said cause for the purpose of rendering a final decree, and that said final decree was rendered at the October Term, 1853, of Mason circuit court, while the court had jurisdiction over the defendant and the subject matter in controversy, such final decree was conclusive upon the parties when the same was rendered and has the same force and effect in this State as it had at the time of its rendition in Kentucky," to the giving of each the defendant excepted.

The defendant then asked the court for the following instructions, which was refused:

1st, "If the jury believe, from the evidence, that there was intervening terms of the Mason circuit court, State of Kentucky, held by said court between the March Term, 1847, of said court and the time of the rendition of said decree made in this cause, to-wit, October Term, 1853, and that no order of continuance or notice to the defendant or otherwise, so as to continue said cause regularly and continually from March Term, 1847, to October Term, 1853, then in law the defendant was not bound to answer further, and said decree, so rendered, at the October Term, 1853, without appearance or notice, then such last decree would be irregular and void and the jury must find for the defendant."

2d, The court instructs the jury that, in a suit on the record of a judgment or decree of a sister state, if the record shows neither service of process, notice to the defendant, or an appearance by him, the judgment is a nullity when attempted to be enforced in this State, the record not offering even a presumption in favor of jurisdiction."

141.

3d, The court instructs the jury that a decree of a court of chancery, which decides the rights of the parties and settles the amount due from one party to the other, and awards an execution thereon, is a final decree; and that, if you believe, from the evidence, that the decree rendered at the November Term, 1846, of the Mason circuit court, was a final decree between the parties, and that the decree rendered at the October Term, 1853, of said court, was rendered without the authority of the laws of the state of Kentucky, the verdict should be for the defendant."

4th, If the jury believe, from the evidence, that the decree rendered at the November Term, 1846, by the Mason circuit court, against the defendant, for the sum of \$1182 96, was tried upon the bill, the answers, depositions, exhibits and commissioners' report, and rendered a decree for \$1182 96, and awarded an execution, that such decree is a final decree and conclusive between the parties thereto."

Said 4th and last instruction was refused by the court, and the defendant excepted.

146.

Whereupon the jury returned a verdict for \$1503 96 debt, and \$1285 77 damages, against the defendant. Thereupon the defendant moved the court for a new trial and arrest of judgment for the following reasons:

1st, The court erred in allowing the order, granting administration to the plaintiffs, to be read to the jury.

2d, The court erred in allowing plaintiffs to read said record in evidence to the jury.

3d, The court erred in allowing the plaintiffs to read the statute of Kentucky, in reference to interest, to the jury.

4th, The court erred in giving the instructions asked by the plaintiffs, to which the defendant excepted, to the jury.

5th, The court erred in refusing to give the instructions asked for by defendant.

6th, Because the verdict of the jury is contrary to the evidence.

7th, Because the verdict of the jury was contrary to law, and for other causes.

The court overruled said motion, and entered up judgment for \$1503 96 debt, and \$1285 77 damages—debt and damages \$2789 73—and the defendant excepted.

JAMES M. WARREN.

JAMES M. WARREN, Plaintiff in error, } Supreme Court of the State of
vs. } Error to Williamson. } Illinois—1st Grand Division—
WHITE'S Administrators. } November Term, 1860.

The issue upon the plea of *NULTLE RECORD* should have been tried by the court. In this case all the issues were submitted to the jury—*McBain vs. Enloe*, 13 Ill., 78.

The record of the Mason county court, appointing the defendants in error administrators of White, should not have been admitted, because it is not proven to be letters of administration contemplated by our statute, nor is there any proof that the court making such order had the power and jurisdiction to grant letters of administration.

The court should not have allowed the record of the Mason circuit court, Kentucky, to have went to the jury, for the reason the record did not show that the decree sought to be recovered was fairly and duly obtained—*Welch vs. Sykes*, 3 Gill, 199.

That the decree in said record, rendered at the November Term of the Mason circuit court, 1846, was a final decree, and the court had no further jurisdiction over the defendant, further than to carry it into execution—*Talbot vs. Todd*, 7th J. J. Marshall, 458; *Field vs. Ross*, 1st Monroe, 137; *Hynes vs. Oldham*, 3 Monroe, 267.

A final decree can be opened, reversed or altered, only by bill of review—*Brooks vs. Love*, 3d Dana, 7.

After a final decree at one term, a subsequent decree at an other term in the same cause is void—*Bobb vs. Bobb*, 2d A. K. Marshall, 646.

The court ought not to have allowed the decree of the Mason circuit court, rendered at October Term, 1853, to be read to the jury, because there was nothing in the record to show that the court had jurisdiction of the defendant. The record should affirmatively show jurisdiction—*Bimler vs. Dawson*, 4th Scam, 541; *Horton vs. Crutchfield*, 18th Ill., 135.

A want of jurisdiction in the court need not be pleaded, when the fact affirmatively appears on the face of the record produced—*Smith vs. Smith*, 17th Ill., 482; *Starbuck vs. Murray*, 5th Wardell, 148; *Sheemway vs. Stillman*, 6th Wardell, 447.

The court ought not to have allowed the record to go to the jury, because it was mutilated. The date of the term of the court at which the decree was rendered, and upon which the plaintiffs declare, has been ERASED and OVER-WRITTEN. The plaintiffs should show a clean and fair record—*Welch vs. Sykes*, 3 Gill, 199.

The court should have sustained the defendant's objection to the reading the statute of Kentucky, fixing the rate of interest, because the plaintiffs did not set up in there declaration the statute of Kentucky.

The computation of interest is too large. The decree should only bear interest from date.

The court erred in submitting the validity of the record to the jury. It was the duty of the court to pass upon the validity of the record, either to admit as evidence or exclude it. If admitted, it was the province of the jury only to fix the debt and assess the damage. Therefore the instructions given by the court to the jury was wrong.

The court erred in giving to the jury the 1st and 2d instructions asked by the defendants in error.

The court erred in refusing to give the 1st, 2d, 3d and 4th instructions asked by the plaintiffs in error.

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OVER-WRITTEN. The plaintiffs should show a clean and fair record—Welch vs

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11th Ill. 483; Starbuck vs Murray, 5th Wardell, 148; Sheenway vs Still- affirmatively appears on the face of the record produced—Smith vs Smith,

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vs Oldham, 3 Monroe, 267. not vs Todd, 7th J. J. Marshall, 458; Field vs Ross, 1st Monroe, 137; Hayes

jurisdiction over the defendant, further than to carry it into execution—Tal- Mass. circuit court, 1846, was a final decree, and the court had no further

But the decree in said record, rendered, at the November Term of the as vs, 3 Gill, 193.

That the decree sought to be recovered was fairly and duly obtained—Welch Kentucky, to have went to the jury, for the reason the record did not show

The court should not have allowed the record of the Mason circuit court, same letters of administration.

any proof that the court making such order had the power and jurisdiction to proven to be letters of administration contemplated by our statute, nor is there

administrators of White, should not have been admitted, because it is not The record of the Mason county court, appointing the defendants in error

Enloe, 13 Ill. 78. court. In this case all the issues were submitted to the jury—Mogbin vs

The issue upon the plea of venue record should have been tried by the White's Administrators.

November Term, 1860. } Error to Williamson } Illinois—1st Grand Division— } Supreme Court of the State of } James M. Warren, Plaintiff in error.

Warren
45

Offer

*Amending Book in Reply Vol 14 Feb 203
Amending or Revising 16 Feb 1893*

JAMES M. WARREN, Plaintiff in error,
vs. } Error to Williamson.
WHITE'S Administrators. } Supreme Court of the State of
Illinois—1st Grand Division—
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The issue upon the plea of NULTLE RECORD should have been tried by the court. In this case all the issues were submitted to the jury—McBain vs. Enloe, 13 Ill., 78. *4th Philips Evidence 277 note 118*

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The court erred in giving to the jury the 1st and 2d instructions asked by the defendants in error.

The court erred in refusing to give the 1st, 2d, 3d and 4th instructions asked by the plaintiffs in error.

*Harmon 285
O'Connor & Mullin 11 26 58
Cannon vs M Roberts 3 Wheat 592
Dexter vs Arnold 5 Mason 308*

The following errors are assigned upon the record:

1st, The court erred in allowing the order, granting administration to defendants, to go to the jury.

2d, The court erred in admitting the record in evidence to the jury.

3d, The court erred in allowing the defendants to read the statute of Kentucky in reference to interest.

4th, The court erred in giving the instructions asked for by defendants.

5th, The court erred in refusing to give the 1st, 2d, 3d and 4th instructions asked for by the plaintiff.

6th, The court erred in not granting a new trial.

7th, The court erred in rendering up the judgment against the plaintiff.

JAMES M. WARREN.

: J. W. EDWARDS, PRINTER, SHAWNEETOWN. :

9th The Court erred in not assisting the Juror
The Court erred in sustaining Demurr to 2^d 3^d & 5th Pleas

An action of Debt cannot be sustained upon a decree in Chancery of an other State, unless the decree has by the Statute of that State, the effect of a judgment at law, and that fact should be averred and proved. Elliott's Anal vs Ray 2^d. Blackford 31. Hugh vs Higgs 8. Wheaton Rpts 697. - Bushick vs Mulock 3^d. Harrison 185.

Interest is not allowed by our Statute on foreign Judgment. Purples Rev Stat 633. Sec 2.

Interest should be averred & proven 3^d A. N. Marshall
Geys vs Pratt ^{side} page 174

No 36

Nov. Term 1860

Warren

by

McCarthy et al

Em to Williams

Rev. & Remanded

Copy of fine over
& opinion sent
to W. Green by Es.
to Messrs. M
M. Col.

8607

Jas Warren

vs
John McCarthy et al
advers