

8796

No. _____

Supreme Court of Illinois

Wm. A. McLain

vs.

Andrew J. Ice

71641  7

Pleas in the Franklin Circuit Court at the
May Term thereof in the year of our Lord one
thousand eight hundred and fifty two, before the
honorable William A. Browning Judge of the
third judicial Circuit of the State of Illinois
and Sole presiding Judge of the Said Franklin
Circuit Court To wit on Saturday the
8th day of May A.D. 1852 The following
orders was made to wit,

William A. McClain
vs
Andrew J. Ice 3 Trospass.
William Adams 3

Summons

The following is the summons in this case
"State of Illinois 3 ss
"Franklin County 3 The people of the State of
"Illinois, to the Sheriff of Said County, greeting
"We Command you to Summons, Andrew J. Ice
" & William Adams 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 Benton on the 1st Monday of May
"next, to answer William A. McClain, in a
"plea of Trospass to his damage of Five hundred
"Dollars as is alledged, and hereof make due
"return to our Said Court, as the Law directs
"In testimony whereof I William A. Browning
"Clerk of Said Court, have hereunto set my
"hand, and affixed the official Seal of Said
"Court, at office in Benton this 21st day of
"April A.D. 1852
"William A. Browning Clerk

(E.C.)

Whereupon the following return was made
Said Summons to wit,
Served on the 23rd day of April 1852 by reading
to the within Names Andrew J Ice and William
Adams

Serving on two	\$ 100
" 20 miles Travel on Same	100
" Returning	10
" This of Andrew Mooneyham	92,10

Sheriff J.C.

The following is the declaration filed in this Cause

Declaration " State of Illinois } of the May Term of the
" Franklin County } Franklin Circuit Court AD 1852
" William A McClain the plaintiff in this
" Suit complains of William Adams and Andrew
" J Ice the defendants in this Suit being Summ-
" oned He of a plea of Trespass For that the
" Said defendants heretofore to wit, on the 20th day of
" March AD 1852 with force and arms took
" seized and exposed to Sale at public vendue
" certain goods and Chattle to wit, five hundred
" Bushels of Corn of the Said plaintiff of good
" Value to wit of the value of one hundred
" dollars to wit at the County of Franklin aforesaid
" And also that the Said defendants on the day
" and year aforesaid with force and arms to wit
" at the County aforesaid seized took and carried
" away certain goods and Chattle of the plaintiff
" of the like quantity quality description and
" value as the Said goods and Chattle in Said
" first Count of this declaration mentioned
" then there found and being and converted and
" disposed of the Same to their own use

" And other wrongs them and them did, to the great
" damage of the Said plaintiff and against the
" peace and dignity of the people of the State of
" Illinois, wherefore the Said plaintiff saith that he
" is injured and hath sustained damage to the amount
" of \$500.00 and therefore he brings his Suit &c
" Casey & Montgomery and
" A D Huff Atty for Plff

Said declaration was endorsed as follows

" Fida April 22nd 1852 "

" W R Browning Clk "

The following plea was filed by the defendants in
this cause

" Wm Adams & }

" Andrew J See }

" Ats. }

" Wm McLane }

Plea " And the Said defendants
" by their attorneys comes and defend the force &
" injury when &c and say they are not guilty of
" the S^d supposed trespasses above laid to their charge
" or any or either of them or any part thereof in
" manner and form as the Said plaintiff ~~and~~ hath
" above thereof complain against them and of this
" they the Said defendants puts themselves upon the
" County &c Parrook Allen & Logan

" Atty for Defts

" And the Plaintiff doth the like "

" Casey & Montgomery and "

" A D Huff for Plff "

" Filed May 4 / 52

" W R Browning Clk "

The following plea was filed by Andrew
J See one of the defendants in this suit

William Adams

Andrew J. See

et al.

William A. McClain

Plea by
Ad See

Frisch

And for further plea

in this behalf the said Andrew J. See one of the
 above named defendants separately and in his
 own right, says actio non because he says that
 on the 17 day of November 1857 he was an acting
 justice of the peace in & for Franklin County Illinois
 duly Commissioned and qualified, and that as
 such justice and according to the form of the Statute
 in such case made and provided he did on the
 29th day of November 1857. render a judgement
 in favor of one Mountsville Fitts as plaintiff
 and against one Joseph Summers as defendant
 for the sum of \$ 17,96 and in pursuance of the
 Statute of law said defendant so being justice of
 the peace as aforesaid, did on the 25th day of Dec
 1857 issue an execution upon said judgement
 in favor of the said Fitts and against the said Sum
 mers for the sum of \$ 17 76 and place the same
 in the hands of William Adams who was then
 and there, an acting constable, duly elected and
 qualified in and for the County & State aforesaid
 and said defendant further avers that afterwards
 to wit on the 20th day of January 1858 he was
 notified by said Adams so being constable
 as aforesaid that William A. McClain the plaintiff
 in the above styled cause claimed a certain lot
 of tobacco, before that time levied on by said Adams
 as constable to satisfy said execution in favor
 of said Fitts and against said Summers wherefore
 said defendant so being justice of the peace as

requirements

As aforesaid issued a Jury warrant, and delivered
the Same to the Said Constable commanding him
to Summon Six good and Lawful men to serve as
jurors in the trial of the right of property (So Claimed
by the Said William A. McClain the plaintiff in this
Suit as aforesaid) to be had and held before Said
defendant Justice of the peace as aforesaid on the 24th
day of January, 1852 and the Said defendant
further avers that on Said last mentioned day
the jurors summoned by the Said Constable to try
the right of Said property wherein the Said
William A. McClain the Said plaintiff in this Suit
was claimant, and Said Mountsville Fitts
defendant appeared was regularly and duly
sworn by Said defendant So being Justice of the peace
as aforesaid after hearing the evidence in Said cause
returned their verdict giving and awarding the
tobacco in dispute to the Said plaintiff in Execution
wherefore Said defendant So being Justice of the peace
as aforesaid rendered a judgment against the
claimant, William A. McClain the plaintiff in this
Suit as aforesaid for the Sum of \$5.51 as costs
of Suit in the Said trial of the right of property
and afterwards to wit on the 23rd day of February
1852 Said defendant So being Justice of the peace as
aforesaid issued an Execution against Said William
A. McClain the Said plaintiff in this Suit on the
Subpoena last above referred to, for \$5.51 and
place the Same in the hands of one Robert Summers
who was then & there an acting Constable duly
elected and qualified in & for the County and State
aforesaid who proceeded as he lawfully might
for the purpose of making the money upon Said
Execution at the Said time in full declaration

"Mentioned to Co. & Open to public Sale the Said
 "Corn of the Said William A McClain the Said plain
 "iff in this Suit to Satisfy the ~~Said~~ Said Execution
 "which are the Said supposed trespasses in the 1st
 " & 2^d Counts of the Said declaration mentioned and
 "this the Said deft and resp^{ts} is ready to verify
 "wherefore &c Logan Parrish & Allen
 for Defts

"Filed May 11/52"
 "W R Browning clk"

The following is the plaintiff's demurrer

Demurrer " William A McClain }
 " vs } May Term of the
 " Andrew Jee impeaded } Franklin Circuit Court
 " with Williams Adams } AD 1852

" And the Said Plaintiff complains and says
 " that the plea of the Said defendant Andrew Jee
 " Jee by him, secondly above pleaded is not suffi-
 " cient in Law to have or preclude the Said
 " plaintiff from having and maintaining his
 " aforesaid action and this he is ready to verify
 " therefore he prays judgment &c

" Cassey & Montgomery and
 " joined in demurrer } AD Duff
 " Allen Logan & Parrish } atty for P & C
 " atty for A Jee

"Filed May 5/52"
 "W R Browning clk"

Plaintiff's demurrer to defendant's amended plea

Demurrer " William A McClain }
 " vs } May Term of the Franklin
 " Andrew Jee impeaded } Circuit Court AD 1852
 " with Williams Adams } And the said plaintiff

"Comus and Says that the Second Plea of the Said
"defendant by him as above amended is not
"sufficient in law to bar or proclud the Said
"plaintiff from having and maintaining his
"aforesaid action and this he is ready to verify
"wherefore he prays judgment, &c

"Casy & Montgomery and
"Somed in demuror } A. D. Huff
"Allen Logan & Parrish Attys for plaintiff"
"Attys for deft &c

"Filed May 6 1852"

"W R Browning clk"

The following is the verdict returned by
the jury

"We the jury find the defendants guilty and find
Verdict the damages to be ~~thirty nine dollars~~
"\$49.00 Forty nine dollars"

Grounds of the defendants motion for a
new trial

"Williams A. McLane

vs

Inshop

"William Adams

In the Franklin Circuit Court

"Andrew J. Fee

May Term 1852

"The defendants in the above styled Cause moves the
"Court, for a new trial upon the grounds following

1st "Because the verdict of the jury is contrary to Law
Secondly, "Because the verdict of the jury is contrary to evidence
Thirdly, "Because the verdict of the jury is contrary to Law and
"evidence

Fourth, "Because the Court, Sustained the demuror to the 2nd
"plea interposed by Andrew J. Fee

Fifth " Because the Court, admitted improper evidence on behalf of the plaintiff to go to the jury

Sixth " Because the Court, gave the jury improper instructions

Seventh, " Because the Court, refused to give the jury proper instructions

Indorsed

"Allen Parrish & Logan"

"Filed May 8/53"

"W R Browning Clk"

The following is the final order and Judgment of the Court. "Saturday May the 8th 1853"

"William A McClain

vs

"William Adams & Andrew Jones } Trustees

" And now at this time

" Comes the parties by their Attorneys, and the

" defendants filed two pleas to the second of which

" the plaintiff by his Attorneys demurs. And the

" Court, being fully advised in the premises sustained

" said demuror to said second plea; Whereupon

Order " leave was given to the said defendants to amend

" their said second plea, which said amendment

" being made the said plaintiff refiled his said

" demuror to said second plea and the Court

" being fully advised in the premises sustained

" said demuror to said second plea as amended

" And now again comes the parties by their attorneys

" and Issue being joined on said first plea of said

" defendants. Let a jury come, and the jurors of

" the jury to wit, Benjamin Wilkerson John Jones

" James Simpson Robert Sage E. J. Franklin B. F.

" Harrison, E. J. Swofford Fountain Taylor Lewis

" Philips Nathaniel Wilkerson Thomas Brinkley &

" Isaac Campbell Twelve good and lawful

" men who being duly elected tried and Sworn
" after hearing all the proofs returned into Court
" the following verdict to wit" We the jury find
" the defendants guilty and award the plaintiff
" damages at Forty nine dollars. Whereupon
" the defendants moved the Court for a new
" trial herein; and the Court being fully advised
" in the premises, overruled said motion
" to which opinion of the Court, the said defen
" dants, by their attorneys then excepted whereupon
" it is considered by the Court that the said plain
" tiff recover of the said defendants the said sum
" of Forty nine dollars for his damages herein
" together with his costs, by him expended and
" may have execution therefor whereupon the
" defendants by their attorney, prayed an appeal
" herein to the Supreme Court, which is granted
" by their entering into bond within thirty days
" from this date, with Edward Moberley Thomas
" M Sans, Mounteville Fitts and Richard
" Maddox or any two of them in the sum of one
" hundred and twenty five dollars conditioned
" as the law directs. It is further ordered that
" the Bill of Exceptions herein be signed and
" sealed at the next Term of the Union Circuit
" Court.

The following Bill of exceptions was filed
by the defendants.

" William A McClain
" vs
" William Adams } "Frookap"
" Andrew J See } "In the Franklin Circuit Court"
" May Term 1852

Be it remembered that on the trial of the
above entitled Cause, the plaintiff introduced in evi-
dence, a certain Transcript of a judgement which
was in the words and figures following

Transcript William A McClain

Mounteville Fitts
Suit brought on the Trial of the right of property
between William A McClain and M. S. Fitts the
parties being notified by William Adams Constable
to appear before me on the 27th day of
January 1852 at twelve to stand the rights of
a lot of Tobacco levied on by said Adams
on the 24 day of January 1852 as the property
of Joseph Summers to satisfy an Execution issued
from my office on the 25th day of December 1851
in favor of M. S. Fitts and a jury being Sum-
moned and Subpoenas to Joseph Henry and
William Adams, The jury and witnesses appeared
& defendant appeared, The jury being sworn
and Sworn and witnesses Sworn, on examination
of the witnesses the Jury returned their verdict as
follows We the jury find the Tobacco to be the
property of Joseph Summers and subject to the
above Execution given under our hands and
Seals this January the 27th 1852 William H
Subanks Elijah Jordan Madison C Waller David
Williams Wiley Willey John Rains Jurors & Judge
ment, was rendered against the plaintiff by
default for Cost of Suit, Justice Fees \$ 1.31
Jurors Fees \$ 1.50 Constables Fees \$ 1.45 Witnesses Fees \$ 1.00
I do hereby Certify that the within is a true
Copy of the judgement, on my docket, of a trial

on the rights of property between William A McClain
and M. S. Fitts on the 27th day of January 1852
Given under my hand and Seal this March 26th
1852 Andrew J. Sco S.P.

So the introduction of which in evidence the said defen-
dants by their Council then and there objected which
objection was then and there overruled by the Court,
and the said Transcript of a judgment was read in
evidence to the jury to which the defendants by their
Council then and there excepted, said plaintiff
then introduced in evidence an Execution which
was in the words and figures following, viz,

State of Illinois }
Franklin County } The people of the State of Illinois
to any Constable of said County Greeting
We command you that of the goods and Chattels
of William A McClain in your County you make
the Sum of five dollars and fifty one cents cost
which Mounteville Fitts lately recovered before
me in a trial of the rights of property and
hereof return to me within seventy days from
this date, given under my hand and Seal this
February 23, 1852 Andrew J. Sco S.P.

So the giving in evidence of which execution the said
defendants by their Council then and there objected
but which objection was overruled by the Court,
and said execution permitted by the Court, to be read
in evidence to the jury, and to which the said
defendants by their Council then and there excepted
said plaintiff then introduced on William R
Browning who being sworn stated that on the
26th day of March 1852 Robert Summers was a
Constable in Franklin County, to which evidence
the said defendants by their Council then and

1 " there objected, but which objection was overruled
" by the Court, and to which overruling by the Court, of
" said objection the defendants by their Council then and
" there excepted, The plaintiff then offered to read
" in evidence the following endorsements on said
" Execution above mentioned which was in the words
" and figures following (viz. " Came to hand on the
" 1st day of March 1852 at 12 o'clock M"

" R. Sumner C. J. C.:

" and lived on one Crib of Corn this the 5th day
" of March 1852" R. Sumner C. J. C.

- " 1st Ten barrels of Corn bid off by George Walker at 75
" 2 Lot of Corn 10 barrels by the same man \$100
" 3 Lot of Corn ten barrels bid off by the same man \$200
" 4 Lot of Corn ten barrels bid off by the same man at \$400

" Satisfied on the 20th day of March 1852, by selling
" 40 barrels of corn and one dollar handed back to
" the defendant" Giving 50 Advertising 25, Commission
" on Sale 55. R. Sumner C. J. C." So the reading of
" which in evidence the said defendants by their Council
" then and there objected which objection was by the
" Court then and there overruled and the said endor-
" sements read to the jury in evidence, to which over-
" ruling of said objection by the Court, to the reading
" of said endorsements, in evidence the said defendants
" by their Council then and there excepted

" Plaintiff then introduced as a witness Joseph
" Henry who testified that he was present, when
" William Adams as constable lived an Execution
" on some Tobacco, said Execution being in favor of
" Mountville Pitts and against Joseph Sumner
" the levy was made on the 24th day of January
" 1852 that McClain did not give Adams a
" notice that he saw that he was with Adams all the

on cross examination witness stated that
" day, he did not know whether McClain give
" Adams a notice or not, such a thing could
" have been done without his seeing it, McClain and
" Adams were together that day McClain claimed
" the Tobacco which Adams lived on, he McClain
" said the Tobacco was his and that he could gain
" it, a day was agreed on between Adams ~~and the~~
" Constable and McClain when the trial of the
" rights of property should be had McClain said
" he had to raise a Smoke house on the day set
" for trial but that the house could be raised
" after it was started without him and that he
" could attend the trial, witness further stated
" that, he was present, when the rights of property
" was tried, which was on Tuesday the 27th day of
" January 1852 the same day which was agreed
" upon between Adams the Constable and McClain
" The Claimant McLean was not present at the trial
" they agreed to try the rights of property before
" Andrew Lee Esq, witness further stated that
" this conversation between Adams the Constable
" and McClain the Claimant, took place near
" McClains house a distance of one half or three
" quarters of a mile from where the Tobacco
" then was on examination by plaintiffs
" Council witness stated that a notice in writing
" might have been given without witness seeing it
" the Tobacco was lived on as the property of Joseph
" Summers William Adams was an acting con-
" stable at the time of the said levy the conversa-
" tion between Adams and McClain occurred a
" short time at McLeans house before the
" levy was made on the Tobacco about trying
" the rights to it, but Adams had apprised

McClain of his intention to make the levy
Plaintiff next introduced as a witness on his
behalf Thomas S. Gray who stated that he resides
something over one mile from Mr. McClain
and that corn in his neighborhood or Settlement
was worth this Spring was worth \$ 1.25 per barrel
that he had known corn sell for that price in
his neighborhood this Spring; The plaintiff then
introduced Eli Smith who stated that on the
28th day of January last, at Ego, Clark the
defendants, Adams and Lee acknowledged that
McClain had not given Adams a notice in
writing to try the rights of property, but that
Adams had notified McClain this was all the
evidence introduced in the trial of the said cause
on behalf of the said plaintiff The Defendants
then offered to introduce in evidence the commis-
sion of said Andrew J. Lee as Justice of the
Peace, his oath of office and bond showing that
Andrew J. Lee was an acting Justice of the Peace
in and for Franklin County, Illinois at the time
of the rendition of said judgments, the trial
of the rights of property and the issuing of said
Execution which facts the plaintiff by his Council
admitted this was all the evidence adduced
on the trial of the said cause

Judge
Instructions
asked by
deft.

The defendants by their Council then asked
the Court, to instruct the jury that if they believe
that the facts and proceedings set forth on the
ocket of Andrew J. Lee the Justice of the Peace
were regular and sufficient to warrant, the
trial of the rights of property and a judgment
in said cause the Justice of the Peace was justified

in issuing an Execution and placing the Same
in the hands of the Constable upon the plaintiff
has shown, that the said Justice had no jurisdiction
in said Cause which instruction the Court refused
to give to which refusal the defendants by their
Council then and there accepted

Secondly The defendants Council also asked the Court
instructions to instruct the jury that the presumption is that
asked by a public officer in the discharge of his official
duty has pursued the course pointed out by
the Statute till the contrary is shown

Which instruction the Court also refused to give
to which refusal the defendants by their Council
then and there accepted The defendants Council

thirdly also asked the Court, to instruct the jury that if the
jury believe from the evidence that the plaintiff
asked by degraded with William Adams to have the rights
of the property to the Tobacco lived upon by said
Adams tried before Lee on the 27th day of January
1852 and that such trial did take place at
the time and place so agreed upon they
should find for the defendants, which instruction
the Court refused and to which refusal by
the Court, to give said instruction the said defen-
dants by their Council then and there accepted

The defendants Council also asked the Court,
to instruct the jury "That if the jury believe from
the evidence that Adams waived a notice in
writing from McLean as to his claim to the
Tobacco and of his intention to prosecute his
claim McLean has no right in this action
to complain that he did not notify said
Adams in writing of such his claim and
intention to prosecute the same which instruction

" " The Court also refused when upon the Said
" defendants by their Council then and there excepted
" to such refusal of the Court to give said instruction
" The defendants Counsel also asked the Court
5th inst. asked to instruct the jury that " that the Court instructs the
by depts " jury that, although the Statute requires a written
" notice from the Claimant, to the constable yet that
" notice may be waived so that the Trial would
" be valid in Law which instruction the Court
" refused to give and to which refusal the Said
" defendants by their Council then and there excepted
" The defendants Counsel asked the Court to instr
6th inst. " uct, the jury that " The Court instructs the jury
asked depts unless the plaintiff has proven that the corn sold
" by Summers was the property of Mc Lain the said
" plaintiff the verdict in this case should be not
" guilty which instructions the court gave
7th inst. The court instructed the jury also The presumption
" of Law is that a public officer performs his duty
" These were all the instructions refused and given
" by the Court as asked by the counsel for the defend-
" ants The Plaintiffs Counsel asked the court to
Plff instr instruct the jury First The foundation or begin-
tion from ning of an action of Rights of property is the
the Court, " written notice which the Claimant is required
" by the statute to give to the Constable Second
" that if the jury believe from the testimony
" that the rendition of the judgement in the
" trial of the right of the property in said tobac-
" co was void then the execution issued upon
" said judgement is equally void and all that
" was done thereon Third that if the jury believe
" from the testimony that the plaintiff has proved

That Robert Summers are acting Constable
of this County, at the time of the Levy and Sale
indorsed on the in favor of Fitts and again
at, McClain and that said Levy and Sale so
indorsed, purports to have been made by him
Said Summers as such Constable they are
bound to presume from these facts that
said Levy and Sale was made by Said Summ-
ers as such Constable; but this is only
prima facie evidence and liable to be rebut-
ted by the defendants all of which instructions
so asked by the plaintiffs Council were given
by the Court to the jury after which the jury
retired the jury returned a verdict in
this case as follows "we the jury find the
defendants guilty and find the damages
to be (\$ 49 00) Forty nine dollars" which
verdict was by consent of the jury before
separating entered in form by the Court,
whereupon the defendants by their Council
moved the Court for a new trial in said
Cause on the grounds following

William A. McEwan }
vs } Propag
William Adams } In the Franklin Circuit
Andrew J. See } Court May Term 1853
The defendants in the above
stated Cause moved the Court for a new
trial upon the grounds following
First Because the verdict of the jury is Contr-
ary to law
Secondly Because the verdict of the jury is
Contrary to evidence

- " Thirdly Because the verdict of the jury is contrary
- " to law and evidence
- " Fourth, Because the Court Sustained the demurrer
- " to the 2nd plea interposed by Andrew J See
- " Fifth Because the Court admitted improper evidence
- " on behalf of the plaintiff to go to the jury
- " Sixth because the Court gave the jury improper instructions
- " Seventh Because the Court refused to give the jury proper
- " instructions

Allen Parrish & Logan

" Which motion for a new trial was overruled
 " by the Court, and judgement given on the verdict
 " of the jury against the defendants and in favor
 " of the plaintiff for Forty nine dollars and
 " costs of suit and to which opinion of the Court,
 " in refusing to grant the defendants a new trial
 " in said cause the defendants by their counsellors then
 " and there accepted.

" The defendants pray that this their bill of
 " exceptions may be signed sealed and made part
 " of the record in said cause which was originally
 " done at the May Term AD 1852 of the Union
 " Circuit Court, pursuant to the order of said
 " Franklin Circuit Court.

"Filed June 14/52" "W A. Denning (Seal)"
 "W B. Browning clk"

@ Special Bond Know all men by these presents that we William
 " Adams Andrew J See Edward Moberley Mowator
 " ville Pitts of the County of Franklin and State
 " of Illinois are held and firmly bound unto
 " William A McClain also of the same County
 " and State, in the penal sum of one hundred
 " and twenty five dollars current money of

" the United States for the payment of which will
" and truly to be made we bind our selves our
" heirs executors and administrators jointly severally
" and firmly by these presents Witness our hands
" and Seals this 28 day of May AD 1852

" The Condition of the above obligation is
" Such that whereas the Said William A McClain
" did on the eighth day of May AD 1852 in the
" Circuit Court in and for the County of Franklin
" and State of Illinois recover a judgement
" against the above bounden William Adams and
" Andrew Jee for the sum of Forty nine
" dollars damages and ~~expenses~~ ~~costs~~ and
" Seventeen dollars and fifty five cents costs of
" Suit, from which Said judgement, of the Said
" Circuit Court, the Said William Adams and
" Andrew Jee have prayed for and obtained
" an appeal to the Supreme Court, of the State of
" Illinois, Now if the Said William Adams and
" Andrew Jee shall duly prosecute their Said
" appeal with effect and shall moreover pay
" the amount of the judgement cost interest and
" damages rendered and to be rendered against
" them in case the Said judgement, shall be affirm
" ed in the Said Supreme Court, Then the above
" obligation to be void other wise to remain in full
" force and effect

" William Adams

Seal

" Andrew Jee

Seal

" Edward Moberley

Seal

" Mounteville Fitts

Seal

which Said Bond was filed of Record to wit
" Filed May 29th 1852 "

" W R Browning clk "

State of Illinois }
Franklin County } I William R Browning Clerk of
the Circuit Court in the County and State aforesaid
do hereby certify that the foregoing is a correct
copy of the record in the case of William
A McClain against William Adams and Andrew
J Lee as appears of Record now on file
in my office

In testimony whereof I have hereunto
set my name and affixed the Seal
of said Court at Benton this 5th day of
November AD 1852

William R Browning clk

Dues for Record 4792 words 10 pr 100 \$ 4 79
Certificate & Seal 25
5.04

Andrew J. Ice
 William Adams } Appellants
 vs
 William A. McLau } Appellee
 } Appeal from Franklin

And the said Andrew J. Ice and William Adams
 Appellants in this cause by W. R. Parrish and W. J.
 Allen their Attorney come here into Court and
 say that in the record and proceedings and in the
 rendition of the judgement in this cause in the
 Franklin Circuit Court there is manifest error
 and the said Appellants by their Attorney aforesaid
 assigns and shews here to the Court the following
 errors by

First

The Court erred in sustaining the Appellee's dem-
 ur to the second amended plea of Andrew
 J. Ice

Second

The Court erred in admitting ^{on behalf of appellee} in evidence ^{under}
 the pleading a transcript of a judgement from
 said Andrew J. Ice's docket; also an execution
 with the endorsements thereon by Robert Summers

Third

The Court erred in refusing to give the first, second,
third, fourth and fifth instructions asked by the
 Appellants,

Fourth.

The Court erred in giving the instructions asked
 by appellee on the trial of this cause

Fifth

The Court erred in admitting improper and
 irrelevant evidence to be given to the jury on the
 trial, of this cause on behalf of the appellee

Sixth

The Court erred in overruling the Appellants' motions
 for a new trial, and in refusing ^{to grant} a new trial

Seventh

The Court erred in giving ^{rendering} judgement against
 the Appellants and in favor of the appellee upon the evidence

Allen + Parrish attys for Appel

And the said William A. McLane came and says,
that in the Record and proceedings aforesaid, and
in the rendition of the judgment aforesaid, there is
no Error.

Carey & Montgomery
Attys. for McLane.

McLane
by
Leid Adams

Prepared

8796