

No. 8727

Supreme Court of Illinois

Thomas Burton

vs.

Young S. Lowry, et al,

71641  7

An Circuit Court began and held
at the Court house in the Town of
McLeansboro in and for the County
of Hamilton in the State of Illinois on
Monday October 3^d 1853 before
the Hon. Samuel S. Marshall presiding
Judge of the Circuit judicial Circuit
Court for the State of Illinois the follow-
ing proceedings were had,

State of Illinois } The people of the
Hamilton County } et al State of Illinois to
the Sheriff of Hamilton County greeting,
We command you to summon William
Benton if to be found in your coun-
ty to appear before the Circuit Court of
said County on the first day of the
next term thereof to be holden at the
Court house in McLeansboro on the
first Monday in the month of Octo-
ber next to answer Young S. Lowrey &
William Collins Administrators of Wm.
Collins deceased in a plea of assump-
sit to their damage of eight hundred
dollars as is alleged and hereof make
due return to our said Court as the
Law directs. Witness I Sherrill
Clerk of our said Court and the
judicial seal thereof at McLeans-
boro this 15th day of August A D 1853.

Sherrill Clerk

Record by reading in hearing of the within
in named Thomas Benton August
17th 1853 John Bond Sheriff Hamilton Co
By C. M. Bowers Deputy Sheriff

And whereas afterwards to wit, ^{at} and during the October term 1853 of said Circuit Court in and for the County of Hamilton the following order was had to wit

Henry J. Searcy &
William Collins addressees
vs
Nathan Benton vs
Aspurat

And across corners the plaintiffs by ~~petition~~ ^{their Attorney} and files their demand to the defendant record plea, which said demand was sustained by the Court with leave to answer, whereupon the said plaintiffs by their said Attorney again demand to the replication of the said D^f plea and cause continued until the term of this Court

Thomas Burton
Atty }
George S. Lawrie et al } October term of the Ham-
ilton Circuit Court
A.D. 1853.

And the said defendant by Montgomery his attorney comes and defends the wrong & injury when &c and saith that he did not undertake or promise in the manner and form as the said plaintiff hath thereof complained against him and of this he puts himself upon the Country &c. H. B. Montgomery.

Atty for Deft.

And for further plea in this behalf the said defendant says ad hoc because he says that the said plaintiff heretofore to wit, on the 7th day of February 1853, was impeached in the County Court of the County of Hamilton and State of Illinois before Robert Paige Judge of said Court at Mansboro in said County in a certain action then and there pending before said Court for the detaining and not paying the very same identical cause of action mentioned in said declaration and such proceedings were had thereon in said Court that afterwards, to wit on the 7th day of February 1853 in the same term of the Court the said plaintiff in consideration & Judgment of the said Court recovered in said plea against said defendant same identical debt of \$800 in the said declaration mentioned whereof the said defendant was convicted as by the record & proceedings thereof now remaining in said Court will more fully appear, which said judgment still remains in said Court in full force & effect, and the said defendant avers that the said Robert Paige as such County Judge ~~had full power~~

then and then had full power, Jurisdiction & Competent Authority to hear & determine said Cause and this the said defendant is ready to verify whereupon in presence Judge &c. H B Montgomery atty for deft.

Traverse & Issue, Nelson & Carpenter for plffs

Laurie & Collins Advers

Thomas Burtin

Ass't

And the 1st plffs by Nelson their Attorney came & say that the said defts 3^d plea is not sufficient in Law as by him above please and this they are ready to verify &c.

Special Causes

1st The 1st plea does not show what kind of action was bro't by 1st plffs against said defts in action before said County Judge

2^d — Said plea does not show whether the County has Jurisdiction of the Subject matter nor is it shown what the Subject matter in action before the County Court was

3^d — Said plea is otherwise informal, defective & insufficient. Nelson for plff

Joinder in Demurrer

William Lissa for deft

And whereas afterwards to wit. At and during the May term 1854 of said Circuit Court in and for the County & State of said the following proceedings were had in said cause to wit,

James S. Lowrey &
William Collins Adams & Co

Nearas Bentons

And was on this day
comes the plaintiffs in person or an
by Nelson their Attorney, and the said
defendant by Montgomery & Allan his
Attorney, and upon the being joined
to be jury come, whereupon come a jury
to wit, William H. Mayby, Jacob Mayby,
Samuel Crook, Thomas B. Barson, Moses
Harper, Benjamin Todd, John Hays, Samuel
Garrison, Joshua Bejjers Coff, Abel
Loyd, William Clark, & Uriah Wallen who
they elected trial and Severin willard
truly to try the issue found, upon the oath
to say we the jury find for the plaintiffs
and assess their damages at two
hundred and eighty seven dollars and
twenty five cents; whereupon the said
defendant by his Attorney moves the Court
for a new trial, and the Court being
sufficiently advised in the premises said
motion was overruled and judgment
rendered for \$287.25. It is therefore
considered by the Court that the said
plaintiffs have and recover of the said de
fendant the said sum of two hundred
and eighty seven dollars, & 25 for their dam
ages together with their proper costs &c and
may have how execution, whereupon
the said defendant by Montgomery his Attorney
may pray an appeal to the Supreme Court
which was granted upon condition the

said defendant enters into Bond within
sixty days with Samuel Patten security in
the penal sum of five hundred
dollars conditioned as the law requires

And whereas after a docket on the
17th day of July 1854 the said defendant
Thomas Burton filed in the Clerk's of-
fice of the said Circuit Court an and
for said County and State a Bond
which is in the words and figures fol-
lowing to wit;

Know all men by these pres-
ents that we Thomas Burton and Samuel
Patten of the County of Hamilton and
State of Missouri are held and firmly
bound unto Gentry S. Lowrey and William
Collins Administrators of the Estate of
William Collins Deceased in the penal
sum of five hundred dollars good
and lawful money of the United States
for the payment of which well and truly
to be made we bind ourselves our heirs
Executors, Administrators and assigns
jointly severally firmly by these presents
sealed with our seals and dated this
11th day of July A D 1854 The conditions
of the above obligation is this that whereas
the said Gentry S. Lowrey & William Collins
Administrators of the Estate of the said Will-
iam Collins Deceased did at the May
Term 1854 of the Circuit Court of Hamilton

County Illinois receive a judgment a
gainst the above bounden Thomas Benton
for the sum of Two hundred and Eighty
Seven dollars and 25/100 besides costs
of suit, from which said judgment the
said Thomas Benton at the Term aforesaid
prayed an appeal to the Supreme
Court of the State of Illinois according
to the Statute in such cases made &
provided, which was granted to him
on the condition that he should within
sixty days from the rendition of said
judgment enter into bond with the sum
of Five hundred dollars with
Samuel Patton as his security condi-
tioned as the Law directs; And if the
said Thomas Benton shall with an-
tiently prosecute his said appeal, and
shall pay whatever judgment may be
rendered against him, and in all
things abide the judgment, order and
finding of said Supreme Court to be
rendered in the premises, then this obliga-
tion to be void, otherwise to remain
in full force and effect

Thomas Benton
Samuel Patton

State of Illinois }
Harrison County } Secy of the Court
Clk of the Circuit Court in and for
said County do hereby certify that the
foregoing is a correct copy of the
proceedings in the above styled cause
as appears of record and the papers

on file in my office
In testimony whereof I have
hereunto set my hand and
the Seal of said Court
at New Haven this 2^d day
of Nov. A. D. 1852
J. Sherman C. M.

Henry J. Loomis
William Collins

Advers &c

Wm Benton
Creech

Filed 23^d Nov. 1854

Henry J. Loomis C. M.

By A. Johnston S. C.

No 49

November 1854.

Thomas Burton

v

Young & Sorey &
William Collins

Appeal from Hamilton

Order by

8727

The Court

Appeal Dismissed

Nov. Term 1854

No 49

Thomas Burton

vs

Young & Sorey &
William Collins

Appeal from Hamilton

Dismissed Nov Term 1854 at
Cost of appellant, with
Judgment for 5 per cent
Damages for Delay.

Damages — \$14.36⁷/₈

Costs — 4.15

Filed public to Office of
Hamilton Co. to Court of
Circuit Court by
Order of R. S. Allen Esq
12th Decr 1854

Returned Satisfied
Rud M. Jones
A.S.