

8757

No. \_\_\_\_\_

# Supreme Court of Illinois

Ferdinand Maxwell

---

vs.

Wm. Adir

---

71641  7

Adair vs. Maxwell } Error to Randolph

And now comes the ptff. in error & says that in the record and proceedings aforesaid there is manifest error in this to wit:

1<sup>st</sup>. The court below erred in finding the issues for the ptff.

2<sup>d</sup> The court below erred in refusing to grant the ptff. an error a new trial.

3<sup>d</sup> The court below erred in rendering judgment for more than the amount found to be due the ptff. below.

wherefore ptff. in error prays that said judgment below may be reversed &c.

Wm B. Underwood  
Atty for ptff. in  
Error.

Entered in error  
by default in error  
G. B. ...



Pleas & pleadings in the Randolph Circuit Court, in the  
State of Illinois,

Be it remembered that on the Twentieth day of September  
A D 1855: the plaintiff filed his declaration in words & figures  
following to wit,

To the Hon. the Circuit Court of Randolph  
County & State of Illinois at the October term thereof for the  
year ~~for the year~~ of our Lord one thousand Eight Hundred & fifty  
five

Ferdinand Maxwell  
of the County of Randolph & State of Illinois Complain<sup>t</sup> of  
William Adair who has been summoned to answer & c. in  
an action of Assumpsit For that whereas heretofore "to wit"  
on the first day of September A D 1854 at the County of Randolph  
& State of Illinois in Consideration that said Plaintiff would write  
for said defendant in his office "to wit" the office of Receiver at  
the Land office of the United State at Kaskaskia in the County  
and State aforesaid said defendant promised to pay said  
Plaintiff the one half amount of his Salary as receiver of said  
Land office & the one half amount of all the per centage which  
he said defendant ~~shall~~ receive from the United States for his  
said defendants services as such Receiver in said Land office  
during & for the time said Plaintiff should so write for said  
defendant in said office and said Plaintiff avers that con-  
fiding in said promises and undertaking of said defendant he  
said Plaintiff did afterwards "to wit" on & c. at & c. write in said  
office for said defendant for a long space of time "to wit" from the  
said first day of September A D 1854 to the first day of January  
A D 1855: during & for which time said defendant received as  
& for his Salary as such Receiver, from the United, a large  
sum to wit "the sum of three Hundred dollars \$300, and as  
per Centage for his said defendants services in said office of  
Receiver, the further large sum "to wit" the sum of Twelve  
Hundred dollars, The one half <sup>of which said several sums</sup> amounting to to wit "the sum



of Seven hundred dollars ~~of which said several sums~~ the said  
 dependant then & there undertook & promised to pay to said plaintiff  
 when he should be requested so to do yet the said dependant  
 hath not paid the sum aforesaid of seven hundred dollars nor  
 any part thereof to said plaintiff but so to do hath wholly  
 neglected & refused to the damage of said Plaintiff of Seven  
 Hundred dollars &c. And for that Whereas the dependant was  
 "to wit" on the said first day of January A D 1855. at the County  
 aforesaid further indebted to said Plaintiff in the sum of  
 Seven hundred dollars for money then & there had & received  
 from said Plaintiff by said dependant at ~~his~~ request.

And in the further sum of Seven hundred dollars for work  
 and labor there & then done and Materials furnished by said  
 plaintiff for said dependant at his request;

And in the further sum of Seven hundred dollars for money  
 found to be due from said dependant to said plaintiff upon  
 an account then & there stated between them in Consideration  
 whereof the said dependant then & there undertook & promised  
 to pay to said plaintiff said several sums of money aforesaid  
 when he should be requested so to do yet the said dependant  
 although after requested hath not paid the said several  
 sums of money aforesaid to said plaintiff nor any part thereof  
 but so to do hath wholly neglected and refused & still  
 neglects & refuses to the damage of said plaintiff, of the sum of Seven  
 Hundred dollars wherefore he brings this Suit &c.

J. C. Holbrook, Atty.  
 for Pltff

A Count,

William Adair,

To Ferdinand Maxwell, D.  
 To 1/2 the amt. of Salary & percentage received by  
 said Wm Adair from the United States as  
 & for his Services as received at the land office  
 at Kaskaskia Illinois from the 1<sup>st</sup> September —



1854 to 1<sup>st</sup> January 1855

131  
\$ 700.<sup>00</sup>

And on the third day of October 1855 the deft. filed his pleas  
as following

Ferdinand Maxwell

vs.

W<sup>m</sup> Adair

} A sumpsit

And the said Deft. comes and defend the wrong &  
injury when &c. and says that he did not undertake  
or promise in manner & form as the said pl<sup>ttf</sup> hath above  
thereof complained & of this he puts himself upon the  
country &c.

And for further plea in this behalf the said deft says  
aetio non because he says that ~~of~~ <sup>after</sup> the said time  
when & before the commencement of this suit to wit on &c.  
at &c. aforesaid he paid and satisfied the said  
pl<sup>ttf</sup>. all sums of money due for a breach of the said  
several promises & this is ready to verify. wherefore  
he prays judgment &c.

Underwood &c.

Attys for Deft.

To which pleas were the following replications:

And on the 4<sup>th</sup> day of October 1855. the following judg-  
ment was rendered in said suit:



Randolph County Circuit Court  
October Term 1855,

Ferdinand Maxwell }  
vs } Adversus  
William Adair }

And now on this day Comes the said Maxwell  
by Holbrook and Koerner his attorneys, and the Defendant  
Adair, by Underwood and Anderson his attorneys, and the  
Defendant's attorneys enters the appearance of the Defendant  
herein. By agreement of parties the Defendant herein  
is ruled to plead to this action by Wednesday morning  
9 o'clock. Whereupon on Thursday the  
Defendant filed his plea the Plaintiff joining  
in issue. This Cause is referred to the Court  
for trial, and the Court after hearing the evidence  
in this case and the arguments of Counsel  
find for the Plaintiff herein the sum of three hundred  
and fifty five Dollars and thirty seven cents  
It is therefore ordered adjudged and decreed by the  
Court that said Plaintiff Ferdinand Maxwell  
recover of and from the said Defendant Will-  
iam Adair the said sum of three hundred  
and fifty five Dollars and thirty seven cents  
so found due by the Court aforesaid, together  
with his costs & charges in & about this  
suit in this behalf expended & may have  
Execution for the same &c.



And on the fourth day of October the Defendant  
presented & filed the following bill of exceptions

Adair }  
at } Assumpsit.  
Maxwell }  
Be it remembered that this Cause  
was tried by the Court by consent, and on said  
trial it was admitted that Defendant was  
Register of the Land Office at Starkasria and  
as such Receiver in November 1854, employed  
Pltff as Clerk in said office, that Deft was  
to pay Pltff as such Clerk one half the Salary  
and one half the Compensation allowed said Receiver  
that the Services due for were <sup>rendered</sup> for the quarter  
next before the passage of the act of March  
3 - 1855. It was admitted if the Pltff was  
entitled to recover at all, he was entitled to recover  
\$475.27. Subject to a deduction of \$120, for  
money borrowed by Pltff of Deft before suit brought

Upon these admissions above & the said act  
of Congress, the Court found for the Pltff \$355.27  
whereupon Deft moved for a new trial because  
the finding was contrary to Law and to evidence  
which motion was overruled by the Court to which  
decision of the Court, the Deft at the time ex-  
-cepted & prays this his bill of exceptions may  
be signed, sealed & made a part of the Record  
which is done.

Sidney Bruce (Seal)



No 36

William Adair  
by  
Gerdinand Maxwell  
vs  
William Adair

---

Ernesto Randolph

Clerk of Supreme Court  
will please issue subpoena  
for ~~Ernesto Randolph~~ *vs* ~~vs~~ *facias*  
to the Sheriff of Randolph  
County returnable to the  
next Term of Supreme Court  
in this suit & oblige  
yours &c  
Wardlaw & Anderson

Witness My Hand  
at Johnston Va  
this 31. Oct. 1855

In witness whereof I have hereunto  
set my hand & the seal of said  
Court this 29<sup>th</sup> day of October  
A D 1855

James M. Falls, Clerk

State of Virginia  
Randolph County  
Sheriff of the Randolph Circuit Court  
hereby Certify that the foregoing is true Copy  
of the Record of proceedings in the foregoing  
said Court.



Adair vs. Error from Raw-  
Maxwell Dolph.

1- The laws in force at the time  
a contract is made enter into  
and become a part of it.

1 Sean 35. Bruce R. 152.

1 26, S. Dig. 113,

2- Intent of parties at time con-  
tract was made must govern  
Chitty or Con 74

3- Complaint was not that fees were  
uncertain, but that they were  
not high enough & not enough  
of them.



Spencer Randolph Co Illinois  
Oct 25. 1855

Clerk of Supreme Court Mount Vernon

Dear Sir

Enclosed you will please find the transcripts in 2 cases  
viz. Maxwell vs. Adair & Holliday vs. Gemmill.

You will please issue in the above cases & I will  
pay you the fees during sitting of Court in Nov.

Please issue at once so that if possible  
they may be determined the ensuing term of S. Court

I am Sir with much

Respect, Yours

Obt. Serv<sup>t</sup>

A. B. Anderson



1000

Clerk of Supreme  
Court, Illinois

---



STATE OF ILLINOIS  
SUPREME COURT,

} SS.

THE PEOPLE OF THE STATE OF ILLINOIS;

WRIT OF ERROR.

To the Clerk of the Circuit Court for the county of *Randolph* GREETING,

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of *Randolph* county, before the Judge thereof, between

*Judithanna Maxwell*

plaintiff, and

*William Adair*

defendant it is said manifest error hath intervened, to the injury of the aforesaid

as we are informed by *his*

complaint, and we being willing that error should be corrected if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly without delay, send to our Justices of the Supreme Court, the record and proceedings of the plea, aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at

Mount Vernon, in the county of Jefferson, on the

*20th Monday of November*

next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law:

Witness, the Hon. WALTER B. SCATES Chief Justice of our said court, and the seal thereof, at Mount Vernon this

*3<sup>rd</sup>* day of *October*  
in the year of Our Lord One Thousand Eight Hundred  
and Fifty-five.

*A. Johnston*  
Clerk Supreme Court.



Adair

my

Mauiell

Writ of error

Filed 31. Oct. 1855.

A. Johnston clerk



No 36

Adair

v

Maxwell,

who is an old line  
Whig - Supporting  
Bucks - Bucks and  
The Dick's vs all  
the odds & Encl's

1 Record

1 Opinion

2 - small

Prepared

No 36

Adair

v

Maxwell

Copy of final order  
sent down 24 Aug  
1851 by request of B & G

8257