

11996


No.

Supreme Court of Illinois

Burnap.

vs.

Marsh, et al.

71641  7

Ogle

Francis Burnap

Jason Marsh et al.

78

11996

1852

Prepared

State of Illinois, set.

WRIT OF ERROR—FREE TRADER PRINT.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of *Ogle* — 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 *Ogle* — county, before the Judge thereof, between —

Francis Burnap - plaintiff - and *Jason Claish & James M. Night* —

defendants it is said manifest error hath intervened, to the injury of the aforesaid *Francis Burnap* — as we are informed by *his* — complaint, and we being willing that error, if any there be, should be corrected 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 plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our justices aforesaid at Ottawa, in the county of La Salle, on the *2^d Monday of June* — 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. SAMUEL H. TREAT, Chief Justice of our said Court, and the seal thereof, at Ottawa, this *third* — day of *March* in the year of our Lord one thousand eight hundred and fifty *two*.

L. Seland

Clerk of the Supreme Court.

Ogle County
Francis Burraps
vs
Jason Clark et al.

Writ of Error

The Return to the writ was
affixed by the undersigned
Schlesinger - N. B. Sigler et al.
Circuit Court Ogle Co
1852

Filed June 26th 1852.
L. Seland Clk.
By P. K. Seland Copy.

State of Illinois
Ogle County
Supts Judicial Circuit

Memorandum

Hear in the Circuit Court
of said County in a certain Cause, between Francis Burnap
Plaintiff and Jason Marsh and James M. Wight
Defendants, which said Cause was brought into said Court
by a Change of Venue from the Circuit Court of Winnebago
County in the State of Illinois aforesaid

Francis Burnap

vs

Jason Marsh & James M. Wight

Memorandum

Be it remembered, that on the
sixteenth day of July A.D. 1850 and afterward as by the following
will appear was returned by the Clerk of the Circuit Court
of Ogle County in the State of Illinois, and by him filed
in said Court, the Declaration in the above entitled Cause
which said declaration was endorsed by the Clerk of the
Circuit Court of Winnebago County in the State aforesaid
with the following endorsement to wit:

"Filed May 15, 1849

W. H. Spafford, Clerk
said which declaration was duly filed in the Office of the Clerk
of the Circuit Court of Ogle County, and is in the words and
figures following to wit —

In the Mumbago Circuit Court

Of the Term of November, in the year
of our Lord one thousand eight hundred
and forty eight

Mumbago
County 3p

Jason Marsh and James M Wright, were summoned
by the Sheriff of the County of Mumbago, to answer unto
Francis Pournap, in a plea of trespass on the case. And
therefor the said Francis Pournap in person complains, for that
whence, the said Jason Marsh and James M Wright, defendants as
aforesaid heretofore to wit, on the seventh day of January, in the
year of our Lord, one thousand eight hundred and forty six
at Rockford in said County, without having any reasonable or
probable Cause for so doing, but contrary and intending, to
imprison harass, oppress and injure the said Plaintiff, falsely
and maliciously, as the Attorneys and Solicitors, of Jacob
Albut, John R. Moor, Augustus J. Albut, and William
J. Albut, of Baltimore in the State of Maryland, said and
procured out of the Circuit Court, for the said County of Mumbago
a certain writ of the People of the State of Illinois, commonly
called a writ of *ne exeat*, against the said Plaintiff,
directed to the Coroner of the said County, of Mumbago, whereby
the said Coroner was commanded to summon the said plain-
tiff personally to appear, before the said Circuit Court,
on the first day of the then next term thereof, to be
holden at the Court House in Rockford, on the second
Monday in the month of April then next, to answer to
a certain petition exhibited against him by the said Jacob
Albut, John R. Moor, Augustus J. Albut, and William

J. Albert, and also, at the same time, to cause the said Plaintiff to make and execute a bond with good and sufficient security, payable to the said Jacob Albert, John R. Moor, Augustus J. Albert, and William J. Albert, in the sum of two thousand dollars, lawful money of the United States, conditioned that he would, not depart the said state without leave, of the said Court, and that he would render himself in Execution, to answer any judgment or decree, which the said Court, might render against him, in the premises, and in default, of his giving such bond, and security, there to commit him to the Common jail of said County, there to be kept in safe custody, until he should do so, of his own accord. — And the said defendants, contriving and intending as aforesaid, caused the said writ to be, and the same was, there and there "indorsed" for bail, for two thousand dollars; and the said writ, being so "indorsed" for bail as aforesaid, the said defendants afterwards and before the day of appearance therein specified, to wit, on the said, sixteenth day of January, in the year last aforesaid, at Rockford aforesaid, in the County aforesaid, contriving and agreeing intending as aforesaid, falsely and maliciously caused the said Plaintiff to be arrested, under and by virtue of the said writ, and to be thereupon imprisoned, and kept and detained in prison, for a long space of time of time to wit, for the space of sixty four days, there next following, and until the said Plaintiff in order to procure his release, and discharge from the said imprisonment, was forced and obliged to, and did afterwards, to wit on the twenty first, day of March, in the same year of our Lord one thousand eight hundred and forty six, make and execute a bond, and procure down sufficient persons, to become sureties thereon, in manner and form, and with condition required, by the said writ — whereas in truth and in fact, the said defendants at the time of suing forth, the said writ, had no reasonable

or probable Cause, for being forth the same, nor for being
causing the said plaintiff to be imprisoned by force thereof, but on the
contrary thereof, the said arrest and imprisonment, were wholly
cancelled, and unlawful. — And the said plaintiff further saith
that such proceedings were thereupon had, upon the said
petition and the said return, of the said Jacob Albert, John R.
Moore, Augustus J. Albert, and William J. Albert, that after
wards, to wit, on the fifteenth day of April, in the year of our
Lord, one thousand eight hundred and forty six, at the
April Term of the said Circuit Court, for the County of Winnebago
by virtue of an Order, made by the same Court, in the Cause
upon the said petition and motion of the said Plaintiff, the venue
therein was changed to the County of Ogle, according to the form
of the Statute in such case made and provided, and a transcript
of the record, and the papers connected with the said suit, upon
the said petition were afterwards to wit, on the sixth day
of May, in the May Term of the Circuit Court, for the
said County of Ogle in the year of our Lord, one thousand
eight hundred and forty six, filed in the said Circuit Court,
for the County of Ogle, at the Court House in Oregon, in the same
County, to wit at Rockford, in the County of Winnebago, and
such proceedings, were there had, in the Cause upon the said
petition and said return, that afterwards to wit, on the
ninth day of May, in the year last aforesaid, it was ordered
by the said Circuit Court, for the County of Ogle that the
said Cause, be dismissed, and that the said plaintiff recover
of the said Jacob Albert, John R. Moore, Augustus J.
Albert, and William J. Albert, his costs, in that behalf
expended, as in and by the said record, and proceedings and
proceedings thereof, remaining in the said Circuit Court,
for the County of Ogle, at Oregon, aforesaid, in the County

in the County of Ogle aforesaid, to wit at Rockford in the
County of Waukegan, more fully appears, - And the said Sent,
upon the said petition, of Jacob Albut, John R. Moon,
Augustus J. Albut, and William J. Albut, was and is by
means of the process, wholly discharged and detained
to wit at Orogen aforesaid, in the County of Ogle aforesaid,
to wit, at Rockford, in the County of Waukegan, by
means of which, said several process, the said plaintiff
whilst he was so imprisoned, as aforesaid, not only suffered
great pain of body and mind, and was greatly exposed
and injured in his reputation Credit and Circumstances
and was hindered and prevented, from performing and
transacting, his lawful affairs and business, by him
during that time to be performed and transacted, but was
also forced to lay out and expend, and did necessarily lay
out, and expend, divers large sums of money, to wit,
one hundred dollars, and was put to great trouble and
labour, in and about obtaining his release, from the
said arrest and imprisonment, and in about, obtaining the
process, and hath been, and is by means of the process
otherwise greatly injured, and damaged, to wit at
Rockford, aforesaid, in the County of Waukegan aforesaid, -

2.

And whereas also, afterwards, to wit on the seventh day
of January in the year of our Lord, one thousand eight,
hundred and forty six, at Rockford aforesaid, in the County
of Waukegan aforesaid, further contriving, and intending,
to imprison unlawfully, and injure, the said
plaintiff, the said defendants, as attorneys and solicitors
of the said Jacob Albut, John R. Moon, Augustus
J. Albut, and William J. Albut, falsely and maliciously
did and prosecuted out of the said Circuit Court, for the

County of Wmmbago, a certain other writ, of the People
of the State of Illinois, commonly called a writ of no
execut, against the said plaintiff, directed to the Coroner
of the said County of Wmmbago, whereby the said Coroner
was commanded to summon the said Plaintiff, personally
to appear, before the said Circuit Court, on the first
day of the then next term thereof, to be holden at the
Court house in Rockford, on the second Monday, in the
month of April three next, to answer to a certain petition
exhibited against him, by the said Jacob Albut,
John R. Moore, Augustus J. Albut, and William
J. Albut, and also at the same time, to cause
the said plaintiff, to make and execute, a bond
with good and sufficient security, payable to the
said Jacob Albut, John R. Moore, Augustus J. Albut
and William J. Albut, in the sum of two thousand
dollars, lawful money of the United States, conditioned
that he would not depart, the said State without
leave of the said Court, and that he would under
himself, in execution, to answer any judgment or
decree, which the said Court might render, against
him in the premises, and in default of his giving such
bond and security, then to commit him to the Common
Jail of the said County, there to be kept in safe custody
until he should do so of his own accord. - And the said
Jacob Albut, John R. Moore, Augustus J. Albut,
and William J. Albut, not having any reasonable or
probable cause to see out any such writ of no
execut, to require or compel the said plaintiff, to make or execute any
such bond, as last aforesaid, in any sum of money, amounting to
two thousand dollars, conditions as last aforesaid, of which the
said defendants well knew, the said defendants further concurring

and intending, as aforesaid, caused the said last mentioned writ, to be,
and the same was then and there endorsed for bail, for two thousand
dollars and the said last mentioned writ, being so endorsed, for bail
as aforesaid, the said defendants afterwards, to wit, on the seventeenth
day of January, in the year last aforesaid, at Rockford aforesaid
in the County of Waukegan aforesaid, further contriving and intending
as aforesaid, feloniously and maliciously, caused the said Plaintiff to be
arrested, under and by virtue of the said last mentioned writ,
and to be thereupon imprisoned, and kept and detained in prison,
for a long space of time to wit for the space of sixty four
days, then next following, and until the said Plaintiff in order
to procure his release and discharge, from the said imprisonment,
was forced and obliged to, and did afterwards, to wit on the twenty
first day of March, in the year last aforesaid, make and execute
a bond, and procure diverse sufficient persons to become sureties
therein, in the sum of, two thousand dollars, in manner and
form and with condition, as required by the said last menti-
-oned writ. Whereas in truth and in fact, the said Jacob Albut,
John N. Moore, Augustus J. Albut, and William J. Albut,
at the time of the issuing forth of the said last mentioned
writ, and of the said arrest and imprisonment, had not any reason-
-able or probable cause, to sue out any such writ of Exeat,
to require or compel the said Plaintiff, to make or
execute any such bond, as last aforesaid, in any sum of
money, amounting to two thousand dollars, for which the said
defendants so maliciously caused the said Plaintiff, to be ar-
-rested and imprisoned, as last aforesaid, and condemned as last
aforesaid, which the said defendants well knew, ~ And the
said Plaintiff further saith, that such proceedings were
thereupon had, upon the said last mentioned petition, and the
suit then on, of the said Jacob Albut, John N. Moore,

Augustin J. Albut, and William J. Albut, that afterwards to wit, on the fifteenth day of April, in the year last aforesaid, at the April Term of the said Circuit Court, for the County of Warrumbago, by virtue of an Order made by the said Court, in the Cause upon the said petition, the venue thereof was changed, to the aforesaid County, of Ogle, according to the Statute in such Case made and provided, and a transcript of the record and the papers connected with the said suit, upon the said petition were afterwards to wit, on the sixth day of May, in the May Term of the Circuit Court, for the said County of Ogle at the Court House in Oregon, in said County, to wit at Rockford, in the County of Warrumbago, and such proceedings were then had, in the said Cause, upon the said last mentioned petition and suit therein, that afterwards to wit, on the ninth day of May, in the year last aforesaid, it was ordered by the said Circuit Court, for the County of Ogle, that the said Cause be dismissed, and that the said plaintiff recover of the said Jacob Albut, John R. Moor, Augustin J. Albut, and William J. Albut, his costs in that behalf expended as in and by the record, and proceedings thereof, remaining in the said Circuit Court, for the County of Ogle at Oregon aforesaid, in the County of Ogle aforesaid, to wit at Rockford, in the County of Warrumbago, more fully appears. And the said suit, upon the said last mentioned petition, of the said Jacob Albut, John R. Moor, Augustin J. Albut, and William J. Albut, was and is, by means of the promises, wholly discharged ended and determined, to wit, at Oregon aforesaid, in the County of Ogle aforesaid, to wit at Rockford in the County of Warrumbago, aforesaid, by means of which, said several promises, the said Plaintiff, whilst he was so imprisoned, as last aforesaid, not only suffered great pain, both of body and mind, and was greatly exposed and injured in his reputation, credit and circumstances,

and was hindered and prevented, ~~from~~ from performing and
transacting his lawful affairs and business, by him during
that time to be performed and transacted, but was also forced
to lay out and expend and did necessarily lay out and expend
down large sums of money, in the whole amounting to a large
sum of money, to wit one hundred dollars, and was put to
great trouble and labour, about procuring his release, from
the said last mentioned arrest and imprisonment, and is and
about other the prisoners, and hath been, and is by means of
the prisoners last aforesaid, otherwise greatly injured, and dan-
gered, to wit at Rockford aforesaid, in the County of
Kankakee aforesaid -

And whereas also heretofore to wit. On the twentieth day of January
in the year of Our Lord one thousand eight hundred and forty six
at Rockford aforesaid. in the County of Winnebago aforesaid
further continuing and intending unlawfully to imprison
the said plaintiff and by such imprisonment to vex, harass
oppress, aggrieve, disgrace and wholly to ruin him the said
Plaintiff, and thereby to gratify the rancor, malignity and
spite which they had against him. the said Defendants as
Attornies and solicitors of Jacob Albert, John R. Moore
Augustin J. Albert and William J. Albert of Baltimore in the
State of Maryland, falsely and maliciously filed in the Circuit
Court for the said County of Winnebago a certain petition
in the names of the said Jacob Albert, John R. Moore,
Augustin J. Albert and William J. Albert as petitioners
and against the said plaintiff as respondent alleging
that on the twentieth day of March then last past. the
said Jacob Albert, John R. Moore, Augustin J. Albert
and William J. Albert filed their bill on the Chancery side
of the said Circuit Court for the County of Winnebago
relating for the among other things, that one Jacob B. Miller
formerly of the County of Winnebago and State of Illinois
was indebted to them in a sum exceeding five hundred
Dollars, and that said Miller had before that time and
on or about the 14th day of December 1841 assigned
to the said plaintiff defendant in the said bill a large
amount of effects, demands and choses in action for the
benefit of his Creditors generally, and that the said petitioners
were entitled to a part of the proceeds of the effects so assigned
and that the said plaintiff had collected a large amount
of money under the said assignment, and that he refused
to make distribution of the same to the Creditors, although
bound by the terms of his assignment so to do. that by
said bill they alleged against the said plaintiff

divin mismanagement and delinquencies in the management of the trust funds under such apPOINTment, and particularly that he had converted the trust funds by him collected over and above certain expenses to his own use, and that the said plaintiff then had in his possession or was liable to account to the creditors of said Miller for a balance over and above all expenses, of about eight hundred Dollars subject however to such reasonable compensation as the said plaintiff might be entitled to as trustee in that behalf, and that by the said bill the said Jacob Albert, John R. Moore Augustin, J. Albert and William, J. Albert, then prayed the said Circuit Court for the County of Winnebago, that an account might be taken of all the actings and doings of the said plaintiff therein, that he might be removed from being trustee in that behalf, and that he might be decreed to deliver up to such trustee as might be appointed all writings, papers, books of account, effects, and choses in action, belonging to the said trust concern, and that pending the litigation that some suitable person might be appointed as receiver to collect the debts of the said concern and take the management thereof while the said suit was pending and for such other and further relief as the case might require. And the said petition further alleged that after the filing of the aforesaid bill, and at the April Term of the said Circuit Court for the County of Winnebago the said Burnap to said action" (meaning that said plaintiff appeared to said Bill) and by his petition in said cause obtained a change of venue to the Circuit Court of Ogle County in the state aforesaid, and that at the May Term then last past of the said Circuit Court of Ogle County the said petitioners appeared and moved the said Court for the appointment of a receiver to take the management of the effects of said concern pending litigation therein and that said plaintiff also appeared there and resisted his removal

motion, and the judge of said Court received his decision upon
said motion until the then last September Term of said
Court, and that at said September Term thereof the motion of the
said petitioner was granted, and an interlocutory order or
decree entered therein, referring the matter to Henry Robert
master in Chancery for said County of Ogle, with full power
to said Robert to appoint whosoever upon inquiry he might
deem to be a proper person as receiver in said cause. And the
said petition further alleged, that by said order the said
master was to appoint some fit and suitable person as
receiver and was to summon said plaintiff before him to
make a transfer of the said effects under oath to the said
receiver, that about the twenty fourth day of December then
last past, he issued his summons to the said plaintiff to
appear before him at the Court House in Rockford, on the
12th day of January 1846 at ten o'clock A.M. when a
hearing would be had on the aforesaid order of reference to
said Master, and that said summons was served on said
plaintiff several days before the said first day of January
by leaving a copy thereof with the said plaintiff, by a deputy
Sheriff of said County of Hennepago, and that said plaintiff
resided in said Rockford where said hearing was had
that said plaintiff refused to appear before the said Master
on the hearing under said order of reference, although
notified that said Master was ready to go on with the same
and waiting for his appearance, but wholly refused to appear
or produce his papers according to the order of said Court
of Ogle County in that behalf and that said Master after
waiting a long time for the said plaintiff to appear, finally
proceeded ex parte with the hearing and appointed John
H. Taylor Esq. receiver he being a fit and suitable person
for such appointment. And the said petition further
alleged, that the said petitioner had been informed and believed

that within a few days after his aforesaid appointment as receiver the said John W. Taylor notified the said plaintiff in writing of his appointment, and demanded the delivery to him by the said plaintiff of all books of account, notes, demands, choses in action or things which had been assigned to him by the said Miller for the benefit of his creditors or that he had in his possession belonging to said trust concern and that said plaintiff then refused to deliver the same to said Taylor, and that at the time of the filing of the said petition, he still neglected and refused so to do, and that the said petitioners had been informed and believed that the said plaintiff had repeatedly declared his determination to resist the orders of the Court in that behalf, and had declared that he never would deliver said papers, books of accounts or choses in action to said concern, but that he would go to jail and lie there first, and also that he would fight in resistance of any officer who might be charged with the execution of any orders of Court to punish him for such contempt. And the said petition further alleged that ever since the making of the said appointment of receiver as aforesaid, the said plaintiff had had the papers, books or choses in action in his possession and exclusive control, subject to his sole disposal and that the said receiver was not able to obtain possession of the same as he was advised, until he could be able to proceed against the said plaintiff in contempt and that such proceeding was at the then present time impracticable, and that the said plaintiff had it then in his power to leave this state, and to take the said books, papers and choses in action beyond the jurisdiction of the said Circuit Court for the County of Hennepin. And the said petition further alleged, that the said petitioners had been informed and believed, that the said plaintiff contemplated leaving this state, and that within a few weeks thereafter

he had repeatedly declared his intention of visiting within a
very short time the City of Washington, and that he had been
endeavoring to collect the debts of said Trust Concern since the
appointment of said receiver (although he was enjoined in the
above mentioned suit from receiving any of the debts of the
concern) and still was so endeavoring, and that he relied upon
such money as he might so collect to bear his expenses east, and
that they had good reason to fear, and did fear that it was the intention
of the said plaintiff to collect all the debts he could of the said
concern and leave the state (meaning the state of Illinois) with
the intention of not returning, but of remaining beyond the
jurisdiction of this state, and that he intended taking the books
papers &c of said Concern with him, or otherwise concealing them
in such manner that the said receiver should never be able
to obtain possession of the same, that they had reason to believe that
the books in possession of said plaintiff belonging to said Concern
showed a much larger balance against the said plaintiff than
they had any means of showing by any other means, and that
such fact was the reason why he so obstinately refused to deliver
up the same, that the effects of said trust fund in the hands of
said plaintiff were worth as the said petitioners were informed,
and believed, the sum of three thousand dollars and that
unless the said plaintiff should be restrained by the people's
writ of *ne exeat republica*, from departing from this state
great and irreparable injury might be done to the said
petitioners and the other Creditors of said Miller, interested
in said Trust fund, And the said petition therefore prayed
that a writ of *habeas corpus* might issue against the said
plaintiff that he might be compelled to answer all and singular
the matters and things therein before set forth, and that a
writ of *ne exeat republica* might issue against the said
plaintiff, restraining him from departing without the
jurisdiction of the said state of Illinois, until the matters and

things in the said petition set forth, could be heard in equity and that on the final hearing of that petition the said plaintiff might be compelled to surrender up to the oforsaid receiver all the Goods, Chattels, Books, Choses in action, demands, title papers, and in short all and every thing that he holds as trustee for the Creditors of the said Jacob B. Miller and that said petitioners might have such other and further relief in the premises as equity and good conscience might require and as to the Judge of the said Court should seem just and equitable. And the verification of the trusts of the said petition at the time of the filing of the same as oforsaid made for the purpose of obtaining the said writ of ne exat, was the affidavit only of the said James M. Wright answered thereto whereby he deposed and said, that all the several matters in the oforsaid petition set forth as from information and belief he believed to be true, and that all the several other matters and things therein set forth were true in substance and in fact. All which several matters and things in this Court above set forth will in and by the said petition more fully and at large appear, the same being and now remaining of record as hereinafter mentioned. And the said plaintiff avers that it was not true as mentioned in the said petition, that at the time of the filing of the said bill in Chancery in the said petition depends to that the said plaintiff had collected an amount of money under the said agreement which he was bound by the terms of his agreement to make distribution of to the Creditors of the said Jacob B. Miller but on the contrary thereof, that he had not collected under the said agreement sufficient money to pay him for his services in administering the trust under the said agreement, and the incidental costs and expenses of the said Administration thereof laid out and incurred by him so that the said Trust fund was then indebted to the said plaintiff in a considerable

balance amounting to wit to five hundred Dollars
And the said plaintiff avers that he was not nor ever was
guilty of the alleged mismanagements and delinquencies
in the management of the said trust fund, referred to in the
said petition, or any of them. And the said plaintiff
avers that he had not at the time of the filing of the said
petition, and after the appointment of the said receiver been
endeavouring to collect the debts of said trust concern, and
was not then so endeavouring as alleged in the said petition
And that he did not intend to leave the state of Illinois
with intention of not returning thereto, or of remaining
beyond the jurisdiction of this state, as in the said petition
is alleged. And the said petition being so filed by the
said Defendants as aforesaid, the said defendants thereupon
to wit on the twentieth day of January, in the year of
our Lord one thousand eight hundred and forty six
at Rockford aforesaid, in the County of Winnebago aforesaid
further continuing and intending to imprison, and by such
imprisonment to vex, harass, oppress, aggrieve, disgrace
and wholly to ruin the said plaintiff, and thereby to gratify
the rancor, maliginity and spite they had against him
the said defendants as Attornies and solicitors of the said
petitioners falsely and maliciously sued and prosecuted
out of the said Circuit Court for the County of Winnebago
in pursuance of the prayer of the said petition a certain
other writ of the People of the State of Illinois, commonly
called a writ of ne exeat, against the said plaintiff
directed to the Coroner of the said County of Winnebago
whereby the said Coroner was commanded to summon the
said plaintiff personally to appear before the said Circuit
Court, on the first day of the next term thereof to
be holden at the Court-house in Rockford on the second
Monday in the Month of April then next, to answer

to the petition in this Court above mentioned, and also
at the same time to cause the said plaintiff to make and
execute a bond with good and sufficient security payable
to the said Jacob Albert, John R Moore, Augustus J
Albert, and William J. Albert in the sum of two thousand
Dollar lawful money of the United States, conditioned
that he would not depart the said State without leave
of the said Court, and that he would render himself in
execution to answer any judgement or decree which the
said Court might render against him in the premises,
and in default of his giving such bond and security then
to commit him to the Common jail of said County
there to be kept in safe custody until he should do so
of his own accord. And the said Defendants further
contriving, and intending as last aforesaid, caused
the said last mentioned writ to be, and the same was,
then and there endorsed for bail for two thousand dollar
and the same said writ being so endorsed for bail
as aforesaid the said defendants afterwards and before the
day of appearance therein specified to wit. On the
said sixteenth day of January in the year last
aforesaid at Rockford aforesaid in the County of Hennepin
aforesaid, contriving and intending as last aforesaid,
falsely and maliciously caused the said plaintiff
to be arrested under and by virtue of the said last
mentioned writ, and to be thereupon imprisoned
and kept and detained in prison for a long space of
time to wit for the space of sixty four days then next
following. And until the said plaintiff in order to procure
his release and discharge from the said imprisonment
was forced and obliged to, and did afterwards to wit
on the twenty first day of March in the year of our
~~Lord~~

Lords one thousand eight hundred and forty six make and executed a bond and procure divers sufficient persons to become sureties therein, in manner and forms, and with Conditions as required by the the said writ. Whereas in truth and in fact, the said Defendants at the time of the filing of the said petition and of the suing forth of the said last mentioned writ, had no reasonable or probable cause, nor any lawful, just or probable reason as Attornies or Solicitors for the said petitioner for suing forth the same writ, nor for causing the said plaintiff to be arrested or imprisoned by force thereof, but on the contrary thereof the said arrest and imprisonment were wholly unlawful and unlawful. And the said plaintiff further saith, that such proceedings were thereupon had upon the said petition and the suit thereon of the said Jacob, Albert, John, R. Moore, Augustin of Albert, and William, J. Albert, that afterwards, to wit on the fifteenth day of April, in the year of our Lord one thousand Eight hundred and forty six, at the April Term of the said Circuit Court for the County of Winnebago by virtue of an order made by the same Court in the cause upon the said petition, On motion of the said plaintiff, the venue therein was changed to the County of Ogle according to the forms of the Statute in such case made and provided, and a transcript of the record and the papers connected with the said suit upon the said petition, were afterwards to wit on the sixth day of May, in the May Term of the said Circuit Court for the said County of Ogle in the year of our Lord one thousand eight hundred and forty six filed in the said Circuit Court for the County of Ogle at the Court House in Oregon in the same County to wit at Rockford aforesaid in the County of Winnebago aforesaid and such proceedings were there had in the cause upon

the said petition and suit thereon, that afterwards
to wit on the tenth day of May in the year last aforesaid
it was ordered by the said Circuit Court for the County of
Ogle that the said Cause be dismissed and that the said
plaintiff recover of the said Jacob Albert, John N. Moore,
Augustin J. Albert, and William J. Albert, his Costs in that
behalf expended as in and by the records and proceedings
thereof remaining in the said Circuit Court for the County
of Ogle at Oregon aforesaid, in the County of Ogle aforesaid
to wit at Rockford aforesaid, in the County of Minnebago
aforesaid more fully appears. And the said suit upon
the said petition was and is by means of the premises, wholly
discharged, ended and determined to wit at Oregon aforesaid
in the County of Ogle aforesaid, to wit at Rockford aforesaid
in the County of Minnebago aforesaid. By means of which
said last mentioned arrest and imprisonment the said
plaintiff whilst he was so imprisoned as last aforesaid
not only suffered great pain of body and mind, and was
greatly exposed and injured in his Reputation Credit and
Circumstances and was hindered and prevented from performing
and transacting his lawful affairs and business by him
during that time to be performed and transacted, but was
forced to pay out and expend and did necessarily lay
out and expend divers large sums of money to wit one
Hundred Dollars and was put to great trouble and labor
in and about obtaining his release from the same arrest
and imprisonment and hath been and is otherwise greatly
injured and damaged to wit at Rockford aforesaid in
the County of Minnebago aforesaid

And whereas also hereofore to wit, on the sixteenth day of
January, in the year of our Lord, one thousand eight hundred
and forty six, the said defendants, further contriving and intending
to vex harass, oppress injure, aggrieve and disgrace, the said
Plaintiff, and to cause him to be unlawfully imprisoned, and to
subject him, to the costs and expenses, as well as to the labor
and trouble, of defending, himself, against the petition and
suit therein, hereinafter mentioned, and also unrightfully and
unlawfully to derive and obtain to themselves great gains,
and profits, as attorneys solicitors and counsellors, from
presenting the said petition and suit, as well as to gratify,
their rancor, malignity, and spite, against the said Plaintiff
falsely maliciously barratorously, filed and exhibited, in the
said Circuit Court, for the County of Warrabago, a certain
other Petition, in the names of the said Jacob Albert, John
R. Moor, Augustin J. Albert, and William J. Albert, as
petitioners and against the said Plaintiff, as respondent,
alleging that, on the twentieth day of March, three last
past, the said Jacob Albert, John R. Moor, Augustin J.
Albert, and William J. Albert, filed their bill, on the
Chancery side of the said Circuit Court, for the County of
Warrabago, setting forth among other things, that one Jacob
B. Miller, formerly of the County of Warrabago, and State
of Illinois, was indebted to them in a sum exceeding
five hundred dollars, and that said Miller, had before that
time, and about the fourteenth day of December 1841,
assigned to the said Plaintiff, defendant in the said bill, a
large amount of effects, demands and claims in action, for the
benefit of his creditors, generally, and that the said petitioners, were
admitted to a part of the proceeds of the effects so assigned, and
that the said plaintiff, had collected a large amount of money.

under the said agreement, and that he refused to make dis-
tribution of the same, to the creditors, although bound by the
terms of his agreement so to do, that by the said bill, they
alleged against the said Plaintiff, gross mismanagement
and delinquencies, in the management of the trust funds, under
such agreement, and particularly, that he had converted the
trust funds by him collected, one and above certain expenses
to his own use, and that the said Plaintiff, then had in his
possession, or was liable to account to the creditors of said
Miller, for a balance one and above all expenses, of about
eight thousand dollars, subject however, to such reasonable
compensation, as the said Plaintiff, might be entitled to, as
trustee, in that behalf; and that by the said bill, the said Justices
Albert, John R. Moore, Augustin J. Albert, and William
J. Albert, thus prayed the said Circuit Court, for the County
of Waukegan, that an account might be taken of all the
actings and doings, of the said Plaintiff therein, that he might
be removed from being trustee in that behalf, and that he
might be decreed to deliver up to such trustee as might be
appointed, all writings, papers, books of account, effects and
chose in action, belonging to the said trust concern, and that
pending the litigation, that said suitable persons, might be appoin-
ted as receivers to collect the debts of the said concern, and take
the management thereof, while the said suit was pending, and for
such other, and further relief, as the case might require, - And
the said petition further alleged, that after the filing of the aforesaid
bill, and at the April Term of the said Circuit Court for the County
of Waukegan, "the said Wornap, to said action" (meaning that the
said plaintiff appeared to said bill,) and by his petition in said
cause, obtained a change of venue, to the Circuit Court of Ogle
County, in the state aforesaid, and that at the May term then last

part of the said Circuit Court, of Ogle County, the said Petitioners, appeared and moved the said Court, for the appointment of a receiver, to take the management of the effects of said Cause, pending litigation therein, and that the said Plaintiff, also appeared there, and resisted the said motion, and that the Judge of the said Court, reserved his decision upon said motion - until the then last September term of said Court, and that at said September term, thereof, the motion of the said petitioners was granted, and an interlocutory order or decree entered therein, referring the matter to Henry Roberts, Master in Chancery, for said County of Ogle, with full power to said Roberts, to appoint whom upon inquiry, he might deem, to be a proper person, as receiver in said Cause, And the said Petition further alleged, that by said Order the said Master, was to appoint some fit and suitable person as receiver, and was to summon said Plaintiff, before him, to make a transfer of the said effects, under oath to the said receiver, that about the twenty fourth day of December then last past, he issued his summons, to the said Plaintiff, to appear before him, at the Court House in Rockford, on the 1st day of January, 1846, at two o'clock, A.M., when a hearing would be had, on the aforesaid order of reference, to said Master, and that such summons, was served on said Plaintiff, several days before the said first day of January, by leaving a copy thereof, with the said Plaintiff, by a deputy Sheriff of said County, of Winnebago, and that said Plaintiff, resided in said Rockford, when said hearing was had, that said Plaintiff, refused to appear before the said Master, on the hearing under said Order of reference, although notified that said Master was ready to go on with the same, and waiting for his appearance, but wholly refused to appear, or produce his papers, according to the order of said Court of Ogle County, in that behalf, and that said Master, after waiting a long time, for the said Plaintiff to appear, finally proceeded

experts with the hearing, and appointed John W Taylor, Esq-
receiver, he being a fit and suitable person for such appointment,
And the said petition further alleged that the said petitioner, had
been informed, and believed that within a few days, after his
aforesaid appointment as receiver, the said John W Taylor, notified
the said plaintiff, in writing of his appointment, and demanded
the delivery to him by the said plaintiff, of all books of account,
notes demands, Chans in action, or things which had been assigned
to him by the said Miller, for the benefit of his creditors, or that he
had, in his possession, belonging to said trust Concern, and that said
plaintiff, then refused to deliver the same, to said Taylor, and that
at the time of the filing of the said petition he still neglected and
refused so to do, and that the said petitioner, had been informed
and believed, that the said plaintiff, had repeatedly declared his
determination to resist the order of Court in that behalf, and had
declared that determination, he never would deliver said papers,
books of account, &c belonging to said Concern, but that he would
go to jail and lie there first, and also that he would fight in resist-
ance of any officer, who might be charged with the execution of
any orders of Court to furnish him for such Contempt, - And the
said Petition further alleged that ever since the making of the
said appointment of receiver as aforesaid the said plaintiff
had had the papers, books &c of the said Concern in his possession
and exclusive contrroll, subject to his sole disposal and that
said receiver was not able to obtain possession of the same
as he was advised, until he could be able to proceed against
the said plaintiff in Contempt, and that such proceeding was at
the this present time impracticable and that the said plaintiff
then had it in his power to leave this state, and to take the
said books, beyond the jurisdiction of the said Circuit Court
Court for the County of Morrisbago, And the said petition

further alleges that the said petitioners had been informed and believed that the said plaintiff contemplated leaving this state, and that within a few weeks thereafter he had repeatedly declared his intention of visiting within a short time the City of Washington, and that he had been endeavoring to collect the debts of the said trust Concern since the appointment of said receiver (although he was enjoined in the above mentioned suit from receiving any of the debts of the Concern) and still was so endeavoring, and that he relied upon such money as he might so collect to bear his expense east, and that they had good reason to fear and did fear that it was the intention of the said plaintiff to collect all the debts he could of the said Concern, and leave the state (meaning the state of Illinois) with the intention of not returning, but of remaining beyond the jurisdiction of the state - and that he intended taking the books, papers &c of said Concern with him or otherwise concealing them in such manner that the said receiver should never be able to obtain possession of the same, that they had reason to believe that the books in possession of said plaintiff belonging to said Concern showed a much larger balance against the said plaintiff than they had any means of showing by any other means, and that such fact was the reason why he so obstinately refused to deliver up the same, that the effects of the said trust funds in the hands of said plaintiff were worth as the petitioners were informed and believed the sum of three thousand Dollars, and that unless the said plaintiff should be restrained by the People, writ of ne exeat republica, from departing from this state, great and irreparable injury might be done to the said petitioners and the other Creditors of said Miller, interested in the said trust funds. And the said petitioners therefore pray, that a writ of summons might issue against the said plaintiff

that he might be compelled to answer all and singular
the matters and things thereinbefore set forth, and that a writ of ne
exat republica might issue against the said plaintiff, restraining
him from departing without the jurisdiction of the said state
of Illinois, until the matters and things in the said petition set
forth could be heard in equity and that on the final hearing
of that petition the said plaintiff might be compelled to surrender
up to the aforesaid receiver all the goods, chattels, books, Choses in
action, demands, title papers, and in short all and every
thing that he holds as trustee for the creditors of the said
Jacob B. Keller, and that said petitioners might have such
other and further relief in the premises as equity and good conscience
might require and as to the judge of said Court should seem
just and equitable And the verification of the truth of the
said petition at the time of filing the same as aforesaid, made
for the purposes of obtaining the said writ of ne exat to be
issued was the affidavit only of the said James M. Wright to the
annexed to the said last mentioned petition whereby he depared
and said that ^{all} the several matters in the same petition set
forth as from information and belief he believed to be true
and that all the other several other matters and things
therein set forth were true in substance and in fact
And the said last mentioned petition being so filed and
verified as aforesaid, the said defendants further contriving
and intending as last aforesaid, to wit at Rockford aforesaid
in the County of Winnebago aforesaid, on the seventh day
of January in the year last aforesaid, falsely and maliciously
and wantonly caused and procured John H.
Taylor then master in chancery of the said County of
Winnebago to make and endorse upon the said last
mentioned petition, and the said John H. Taylor, master as
aforesaid did then and there make and endorse upon the

same petition an order in the following words that is to say
that "Let a writ of *exeat re publica* issue according to the
prayer of the within petition, and hold the defendant to bail in
the sum of Two thousand dollars. John W. Taylor Master
All which several matters and things in this Court above set
forth will in and by the said last mentioned petition more
fully and at large appear, the same being and remaining
of record as hereinafter mentioned. And the said plaintiff
avows that it is not true as mentioned in the said last mentioned
petition, that at the time of the filing of the bill in Chancery
in the same petition referred to as aforesaid that the said plaintiff
had collected an amount of money under the said assignment
which he was bound by the terms of his assignment to make
distributions of, to the Creditors of the said Jacob B. Keller
but on the contrary thereof, that he had not collected under the
said assignment sufficient money to pay him for his services
in administering the trust under the said assignment and
and the incidental costs and expenses of the said administration
thereof laid out and incurred by him, so that the said trust
fund was then indebted to the said plaintiff in a considerable
balance amounting to wit to five hundred dollars. And the
said plaintiff avows that he was not nor ever was guilty of the
alleged mismanagements and delinquencies in the management
of the said trust funds referred to in the said plaintiff last mentioned
petition nor of any of them. And the said plaintiff avows
that he had not at the time of the filing of the said last
mentioned petition and after the appointment of the said
receiver, been endeavoring to collect the debts of the said
trust concern and was not then so endeavoring, as is alleged
in the same petition, and that he did not intend to leave
the state of Illinois with intention of not returning thereto
or of remaining beyond the jurisdiction of this state

as in the same petition is alleged. And the said last mentioned petition being so filed by the said defendants as aforesaid, and the said order of the Master in Chancery of the County of Winnebago being made and endorsed thereon as aforesaid. Afterwards to wit on the day and year last aforesaid, at Rockford aforesaid, in the County of Winnebago aforesaid, a writ of exeat was thereupon and in consequence and by reason thereof issued by the clerk of the said Circuit Court for the County of Winnebago under the seal thereof, in accordance with the prayer of the said last mentioned petition, and in pursuance of the said order by which said last mentioned writ of exeat the People of the State of Illinois Commanded the Coroner of the said County of Winnebago to summon the said plaintiff to appear before the said Circuit Court on the first day of the then next term thereof, to be holden at the Court house in Rockford on the second Monday in the Month of April then next to answer to the petition on this Court above mentioned and also at the same time to cause the said plaintiff to make and execute a bond, with good and sufficient security payable to the said petitioner, in the sum of two hundred Dollars lawful money of the United States, Conditions that he would not depart the said State without leave of the said Court, and that he would render himself in execution to answer any judgement or decree which the said Court might render against him in the premises and in default of his giving such bond and security, then to commit him to the Common Jail of said County, there to be kept in safe Custody until he should do so of his own accord. And the said plaintiff afterwards and before the day of Appearance therein specified to wit on the day and year last aforesaid at Rockford aforesaid in the County of Winnebago aforesaid was arrested by the said Coroner of the County of Winnebago under and by virtue

of the said last mentioned writ and was thereupon imprisoned and kept and detained in prison, for a long space of time, to wit for the space of sixty four days then next following and until the said plaintiff in order to procure his release and discharge from the said last mentioned arrest and imprisonment, was forced and obliged to and did afterwards to wit on the twenty first day of March in the year of our Lord one thousand eight hundred and forty six make and execute a bond and procure divers sufficient persons to become sureties therein in manner and form and with condition as required by the said last mentioned writ. Wherein in truth and in fact, the said defendants at the time of the filing of the said last mentioned petition and of obtaining and procuring the said order to be made and endorsed thereon as aforesaid had no reasonable or probable cause nor any lawful just or probable reason, as attorneys or solicitors of the said petitioner for filing or exhibiting the said petition, or procuring or obtaining the said order or for having the said plaintiff arrested or imprisoned as last aforesaid, but on the contrary thereof, the filing of the said petition and the obtaining of the said order and the said arrest and imprisonment of the said plaintiff in consequence thereof were wholly causeless, malicious, vexatious, barratrous and unlawful. And the said plaintiff further saith that such proceedings were thereupon had upon the said last mentioned petition and suit thereon of the said Jacob Albert, John B. Moore, Augustus J. Albert and William J. Albert that afterwards to wit on the fifteenth day of April, in the year of our Lord one thousand eight hundred and forty six at the April Term of the said Circuit Court for the County of Nemabago by virtue of an order made by the same Court in the cause upon the said petition, on motion of the said plaintiff the venue therein was changed to the County of Ogle according to the form of the statute in such case made

and provided, and a transcript of the record in and the papers
connected with the suit upon the said last mentioned petition
were afterwards to wit on the sixth day of May in the Next
Term of the Circuit Court for the said County of Ogle, in the year
of our Lord one thousand eight hundred and forty six filed in the
said Circuit Court for the County of Ogle, at the Court room in
Oregon in the same County to wit at Rockford aforesaid in the
County of Winnebago aforesaid and such proceedings were there
had in the cause upon the said last mentioned petition and
suit thereon that afterwards to wit on the tenth day of May
in the year last aforesaid it was ordered by the said Circuit
Court for the County of Ogle, that the said cause be dismissed
and that the said plaintiff recover of the said Jacob Albert
John R Moore, Augustus J Albert and William J Albert
his costs in that behalf expended, as in and by the record and proceedings
thereof, remaining in the said Circuit Court for the County of Ogle
at Oregon aforesaid in the County of Ogle aforesaid to wit at
Rockford aforesaid in the County of Winnebago aforesaid more
fully appear. And the said suit upon the said last mentioned
petition was and is by means of the premises wholly discharged ended
and determined to wit at Oregon aforesaid in the County of Ogle
aforesaid to wit at Rockford aforesaid in the County of Winnebago
aforesaid, by means of which several premises in this Court above
mentioned, the said plaintiff was greatly vexed, disgraced, harassed
and annoyed and whilst he was imprisoned as last aforesaid
suffered great pain both of body and mind, and was greatly
exposed and injured in his reputation, credit and circumstances
and was hindered and prevented from performing and transacting
his lawful affairs and business by him during that time to be
performed and transacted and was forced to lay out and expend
and did necessarily lay out and expend divers large sums

of money to wit one hundred Dollars in the whole, and was put
to great trouble and labor in and about defending the said last
mentioned suit, and in and about obtaining his release from
the said last mentioned arrest and imprisonment and in
and other the premises, and hath been and is by means of the
premises in this Court mentioned, otherwise injured and
damified to wit at Rockford aforesaid in the County of
Winnebago aforesaid

Wherein the said Plaintiff saith, that he
is injured and hath sustained damages to the amount of three
thousand dollars, and therefore he brings suit

Francis Burroughs
Plff in Person

And which said first and second Counts of the declaration aforesaid
were endorsed by the Clerk of the Circuit Court of said Ogle County as follows

"Filed July 16 1850.

R. B. Light Clerk"

And which said third Count of the said declaration was endorsed by the said
Clerk as follows to wit

"Filed October 23rd 1850

R. B. Light Clerk"

And which said fourth Count of the said declaration was endorsed by
the said Clerk as follows to wit

"Filed October 23. 1850

R. B. Light Clerk"

And afterwards to wit on the second day of September
A.D. 1850 the said Defendants filed in the Office of the Clerk
of the Circuit Court of said Agle County their demurrer to the
first and second Counts of the Plaintiffs Declaration, herein
which ~~Declaration~~ demurrer is in the words following to
wit -

Ogle Circuit Court
Jesse Marsh & James M. Wright

vs

Francis Burnap

Sept Term

"And the Defendants in
their own proper persons, come and defend the wrong and
injury when and say that the first Count of Plaintiffs decla-
ration amended declaration, is not sufficient in Law."

"And as to the second Count of the Plaintiffs declaration
they say the same, is not sufficient in Law -

Marsh & Wright
Writs in person

And afterwards to wit on the 4th day of September at the
September Term of the Circuit Court in and for the County of
Agle, for the year of our Lord one thousand eight hundred and fifty,
in the records proceedings of said day Court for said day is the
following entry to wit -

vs
Francis Burnap

vs

Jesse Marsh & James M. Wright

This day come the several
parties in person, and the several demurrers of the Defendants heretofore

filed to the several Counts, of the Plaintiffs declaration, having come on to be heard, and it appearing to the Court, that the first Count ~~to~~ of said declaration, is not sufficient in Law, for the plaintiff to have and sustain his said action, under said Count, the Court sustains the demurrer of the defendants to said first Count. It is therefore considered by the Court, that plaintiff take nothing by his said first Count, of his declaration, and that defendants go bare their without day. — And it appearing to the Court, that the second Count of Plaintiffs declaration is sufficient in law, the Court overrules the demurrer of defendants thereto, therefore the defendants are here to withdraw their said second demurrer, to said second Count, and to plead thereto, which leave is granted by the Court —

And afterwards, to wit, at the said September Term of the Circuit Court, in and for said Ogle County, for the year 1850 on the 5th day of September Came the Plaintiffs Defendants in person, and file their pleas herein in the words and figures following, to wit —

"Ogle Circuit Court

Jason Marshall & James McWright

vs,

Francis Burnap

And the Defendants in their own proper person, come and defend the wrong and injury where so, and say that they are not guilty, of the said several supposed grievances, above laid to their charge, or any or either of them, in manner and form as the Plaintiff hath above thereof, in his second Count, declared against them, and of this they put themselves upon the Country —

" And for a further plea in this behalf, the defendants say actio-
 non, because they say, that the said defendants, was not guilty
 of the said several supposed grievances, in the second Count, of
 of said declaration mentioned, or any of them, or either of them
 at any time within two years next before the Commencement
 of this Suit, in manner and form as the said Plaintiff hath
 above thereof Complained, against them, and this they are
 ready to verify, therefore they pray judgment, if the Plaintiff
 his action aforesaid ought to maintain -

And for a further plea
 in this behalf, the defendants say actio non, because they say
 that the several supposed Causes of action, in the second Count, in the said
 declaration mentioned, did not, nor did any or either of them accrue at
 any time within two years next before the Commencement of
 this Suit, in manner and form as the Plaintiff hath above com-
 -plained, against them; the said Defendants, and this they
 are ready to verify, wherefore they pray judgment, if the Plaintiff
 his action aforesaid ought to have or maintain -

And where said pleas were entered by the Clerk

"Filed Sept 5, 1850
 R.B. Byrd Clerk"

Jason Marsh } in pro
 Jas M. Wright } perone

And afterwards to wit at the said September Term of said Court
 on the sixth day of September AD 1850 in the reada pro-
 ceedings of said Court on said day is the following entry to wit

" Francis Burnap
 vs
 Jason Marsh & James M Wright

And now on this day comes
 the said Plaintiff, and on his motion, leave is given to Plaintiff
 to file an additional Count, to his declaration, in sixty days
 and it is ordered that he furnish defendants with a copy of the same,

And on the 5th day of September AD. 1852 at the said September
Term of said Court, Came of the Plaintiff and filed his
Similer and demurrer to the Defendants pleas herein, in
the words and figures following to wit -

In the Ogle Circuit Court

Francis Burnap

vs

Jason Marsh & James M Wright

And the said plaintiff, as to the plea of the said defendants, first
above pleaded and wherof they have put themselves upon the
Country, doth the like -

And as to the plea of the said
defendants, by them secondly above pleaded, the said plaintiff
says he ought not to be barred &c because he says that the said
second plea is bad, and not sufficient in law &c and this &c wherof &c

And as to the plea of the said defendants by them thirdly above
pleaded, the said plaintiff says, he ought not to be barred, &c because
he says that the said third plea is bad, and not sufficient in law &c
and this &c wherof &c

Francis Burnap
plaintiff in person

which said demurrer &c was endorsed by the Clerk as follows
to wit -

Filed Sept. 5, 1850

R P Lyons Clerk

And afterwards to wit, at the August Term of the Circuit Court in and for the County of Ogle for the year 1851 on the 26th day of August in the recorded & recorded of said day in the said Court, is the following entry to wit

Francis Burnap

17
Jason March & James M. Wright. Now on this day comes the Plaintiff in proper person, and the defendants, in proper person and the Plaintiff enters his motion for leave to file an additional count to his declaration. After hearing the arguments and being fully advised in the premises it is ordered that the motion be sustained and on motion of defendants the cause is continued. And it is further ordered by the Court that the costs herein abide the result of the suit.

And afterwards to wit at the January Special Term of said Court, on the 10th day of January A.D. 1852 comes the defendants in their own proper persons, and files their pleas to the third and fourth Counts of the Plaintiffs declaration aforesaid in the words and figures following to wit

Ogle Circuit Court

Jason March &
James M. Wright
vs.

Sp. January Term 1852

Francis Burnap

And the said defendants, in their own proper persons, come and defend the wrong and injury aforesaid and say that they are not guilty of the said several supposed grievances in the said third and fourth Counts

being the additional counts of the plaintiffs declaration above
said to their charge, or any or either of them, in manner
and form as the Plaintiff hath in the third and fourth counts
above alleged against them, and of this they put themselves
upon the Country -

And for a further plea in this behalf
as to the said third and fourth counts, of the plaintiffs declaration
the defendants say actio non, because they say that the said
defendants were not guilty of the several supposed grievances in
the said third and fourth counts of Plaintiffs declaration men-
tioned or any of them, or either of them, at any time within
two years, next before the Commencement of this Suit, in manner
and form as the said Plaintiff hath above thereof Complained, against
them, and that they are ready to verify, wherefore they pray
judgment if the Plaintiff his action aforesaid ought to be
and maintain -

And for a further plea in this behalf,
as to the said third and fourth counts, of plaintiffs declaration
being the additional counts thereof, the defendants say actio
non, because they say that the said several supposed causes
of action in the said third and fourth counts, mentioned did
not, nor did either of them, occur at any time, within two
years, next before the Commencement of this Suit, in manner
and form as the plaintiff hath above thereof Complained, against
them, the said defendants, and that they are ready to verify, wherefore
they pray judgment, if the plaintiff his action aforesaid, ought
to have or maintain -

Jus in March } in prop
Jus in Wight } person

And which said pleas were endorsed by the Clerk of said Court as follows
to wit -

"Filed July 15, 1852

W. H. Lytle Clerk"

And afterwards to wit on the 15th day of January AD 1852
aforesaid at the term aforesaid of said Circuit Court, came the
plaintiff, and filed his demurrer to the second and third pleas
of the defendant filed as aforesaid which demurrer is in the
words and figures following to wit -

"In the Ogle Circuit Court

Francis Burnap

vs

Jason Marsh & James M Wright

}
}
}
}

And the said plaintiff as to the
said second plea of the said defendants to the said third and fourth
Counts of the said declaration says that by reason of any
thing, in the said plea alleged, he the said plaintiff ought not
to be barred, &c because he says, that the same plea, and the
matter therein alleged, in manner and form &c are not sufficient
in law and this &c wherefore &c

And the said plaintiff as to
the said third plea of the said defendants, to the said third
and fourth Counts of the said declaration being the additional
Counts thereof, says that by reason of any thing in that
plea alleged, he the said plaintiff ought not to be barred, &c
because he says that the same plea, and the matter therein
alleged in manner and form &c are not sufficient in law
and this &c wherefore &c

Francis Burnap p^lff in
person

and which said demurrer was endorsed by the clerk of said
Court as follows to wit -

Filed January 15, 1852
R B Lynt clerk

And afterward to wit on the 11th day of January 1852
at the said January term of said Court in the records proceedings
thereof on said day, is the following entry to wit

Jason Mark & James M. Wright

vs

Francis Burdick

This day came the plaintiff
in his own proper person, and also the defendants in person and
and the dismissal of the plaintiff, to the second and third pleas, of the
defendants to the second count of the plaintiffs declaration, and also
the dismissal of the plaintiffs to the second and third pleas of the
defendants to the third and fourth counts of Plaintiffs declaration.
Came on to be heard, and after hearing the arguments of the parties
therein, it appearing to the Court, that the several pleas of the defendants
by the plaintiff dismissed to, as aforesaid, are sufficient in
law, to bar and preclude the action of the plaintiff, it is
ordered that the plaintiff take nothing by his said second third
and fourth counts of his declaration, and that defendants
go hence thereof without day, and it is considered by the
Court, that the defendants have and recover of the Plaintiff
their costs in this behalf expended, and that they have execution
therefor.

State of Illinois
Cyle County

J. R. B Light, Clerk of the Circuit Court,
in and for said County, do hereby Certify that the foregoing is a
true copy of the the Declaration and ~~proceedings~~ pleadings
in the above entitled Case and a full and complete trans-
-cript of of all the orders of said Court in relation to the
same - truly Copied from the record and files of My Office
In testimony whereof I have hereunto set my hand
and affixed the seal of said Court, this 10th day
of June A D 1852 -

J. R. B Light Clerk

Clerks Fee

Making Transcript 12600 words \$12.60
Certificates ———— .35
\$12.95

And now, to wit on the first day of the June term of the Supreme Court, being the second Monday of June, in the year of our Lord one thousand eight hundred and fifty-two, at the court house in Ottawa in the county of La Salle, before the justices of the said Supreme Court, comes the said Francis Burnap in person, and says, that in the record and proceedings aforesaid, ~~there is~~ and in giving judgment as aforesaid there is manifest error in this, that the said first count of the said declaration is sufficient in law for the said plaintiff to have and maintain his action thereof against the said defendants. And also there is error in this, that the said Circuit Court ought to have overruled the demurrer of the said defendants to the said first count, and not to have sustained the same. And also, ~~that~~ there is error in this, that the said Circuit Court ought to have given judgment upon the said demurrer for the said plaintiff against the said defendants, and not in favor of the said defendants against the said plaintiff. And also there is error in this, that the said second and third pleas of the said defendants to the said second count of the said declaration are not sufficient in law, nor is either of them sufficient in law, to bar the said plaintiff from having and maintaining his aforesaid action thereof against the said defendants. And also there is error in this, that the said Circuit Court ought to have sustained the demurrer of the said plaintiff to the

said second and third pleas of the said defendants to the said second count of the said declaration of the said plaintiff, and ought not to have overruled the same. And also there is error in this, that the said circuit court ought to have given judgment upon the said demurrer ^{second and third pleas to the said} to the said second count for the said plaintiff against the said defendants, and not in favor of the said defendants against the said plaintiffs. And also there is error in this, that the said second and third pleas of the said defendants to the said third and fourth counts of the said declaration are not sufficient in law, nor is either of them sufficient in law, to bar the said plaintiff from having and maintaining his aforesaid action there of against the said defendants. And also there is error in this, that the said circuit court ought to have sustained the demurrer of the said plaintiff to the said second and third pleas of the said ~~third~~ defendants to the said third and fourth counts of the said declaration of the said plaintiff, and ought not to have overruled the same. And also there is error in this, that the said circuit court ought to have given judgment upon the said demurrer to the said second and third pleas of the said defendants to the said third and fourth counts, for the said plaintiff against the said defendants, and not in favor of the said defendants against the said plaintiff. And also there is error in this that by the record aforesaid, it appears that judgment upon the whole of the said record appears to have been given ~~against the~~ for the said defendants against the said plaintiff;

whereas by the law of the land the said judgment ought to have been given for the said plaintiff against the said defendants. And the said Francis Burnap prays that the judgment aforesaid, for the errors aforesaid, and for other errors in the said record being, may be reversed, annulled and altogether holden for nought, and that he may be restored to all things which he hath lost by occasion of the said judgment &c.

Francis Burnap
Plaintiff in error, in person.

Ogle.
Supreme Court,

Francis Burnap
vs.

Jason Marsh and
James M. Wight.

Writ of Error, Returns
and Assignment of Error.

Record ~~copy~~ of error -
Filed June 26th 1852
S. Seland Clk.
By P. H. Seland Depy.

• Burnap.

State of Illinois, }
 Supreme Court, } SS.

The People of the State of Illinois

TO THE SHERIFF OF *Winnebago* County.

Because in the record and proceedings, and also in the rendition of the judgment, of a plea which was in the circuit court of *Ogle* county, before the Judge thereof, between, *Francis Burnap*

plaintiff and *Jason Clark & James M. Night*

defendant, it is said that manifest error hath intervened to the injury of the said *Francis*

Burnap as we are informed by *his* complaint, the record and proceedings of which said judgment, we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said *Jason Clark & James*

M. Night

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the *second* Monday in *June* next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall think fit; and further to do and receive what the said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Jason Clark & James M. Night* notice, together with this writ.

WITNESS, the Hon. *Samuel A. Treat*
 Chief Justice of our said Court, and the seal thereof,
 at Ottawa, this *third* day of *March*
 in the year of our Lord, one thousand eight hundred
 and *fifty-two*.

L. Leland

Clerk of the Supreme Court.

Francis Burrup
 Jason Clark &
 James M. Night

Sci. Ja. to Winnebago
 To June Term 1852.

I have served the
 within writ by reading
 the same to the within
 named
 Jason Clark and
 James M. Night
 this 24th day of
 March 1852

Given under my hand and seal of office
 at the Court House in the City of Winnebago
 this 26th day of March 1852.
 J. P. Johnson
 Sheriff
 Winnebago County

Served 1.20
 Mil - 10
 Post writ - 10
 \$ 1.40



Witness the Hon. J. P. Johnson
 Clerk of the Supreme Court

DO THE SHERIFF OF
 The People of the State of Illinois
 County, before the Judge thereof, between
 the judgment of a writ which was in the Circuit Court of
 because in the record and proceedings and also in the rendition of

In the Supreme Court.

A writ of error directed to the clerk of the Circuit Court for the county of Ogle, to remove the record and proceedings in a certain cause lately depending in the said Circuit Court, wherein Francis Burnap was Plaintiff and Jason Marsh and James M. Wright were defendants, of a plea of trespass on the case, returnable on the first day of the next term, at Ottawa in the county of La Salle.

Also a writ of scire facias to hear errors in the same case, directed to the sheriff of the county of Winnebago.

Dated 25 Feb 1852.

Francis Burnap,

Plaintiff in error in person.

Rockford, 25 February, 1852.

L. Seland, Esq.,

Clerk Supreme Court

Dr Sir,

I inclose proceeds for writ of error and scire facias in Burnap vs. Marsh and another, and also \$5.00. Yours, &c.

Francis Burnap.

Ogle Co.

Francis Burnap
vs
Jacob Marshall et al.

Receipt

Filed March 3^d 1852
L. Island Ct.

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