

State of Tennessee

As I remembered that Hentzschel went on the 3rd day of May 1840 a petition for extensive Superceaus & extensive was filed in my office in the word and figures following to Hunt

To The Honorable M. A. Martin Judge of the County of Mont
gomery at Clarksville. Your petitioner William L. Allen would most
respectfully represent to your Honor that about the day of Jan
uary 1821 he sold to John M. Brite a certain tract of land supposed
to contain about 70 acres. He would state to your Honor that this
contract of sale was verbal there being no memorandum in writing
whatsoever as to the sale. He said John M. Brite agreeing to pay your
petitioner the sum of three hundred & fifty dollars. That in pursu-
ance of said contract. the said Brite this father took the posses-
sion of said tract of land & commenced cutting timber & cultivating
a small portion which was cleared so continued for about one or
two years. in the mean time the said John Madison Brite paid
to your petitioner about the sum of \$72.50. that J. Brite the father
of the said John M. Brite. paid about the sum of \$18.00. making
in all the sum of \$90.50. which was paid to him in part con-
sideration for the purchase of the land. The matter noted in this
matter until a short time ago when to the astonishment of your
petitioner he learned for the first time that the said Brite did not
intend to comply with his verbal contract for the purchase of
the land that he would make your petitioner pay back the
money the property received by him in consideration of the land
- Your petitioner being advised that by the laws of the land
a verbal contract for the sale of land was void & of no effect
that he could not enforce the contract either in law
or Equity submitted to a repayment of the money the prop-
erty not by his court. but because he was forced to do it
He would state to your Honor that the said John M. Brite
procured by warrant against your petitioner for the repayment
of the purchased money. and actually received judgment against
him before Mr. W. Cullum & Henry M. Hall Esquires some time

The last of March 1843. for about the sum of \$72.00 Dollars
which your petitioner states is unjust and oppressive. He would state
to your Honor that after the said judgment was rendered against him
he being totally ignorant of his right and proceed they for said judg-
ment. being then advised that he was bound to pay the precise full
amount of said judgment. But your petitioner has since been advised
by his counsel that a justice of the peace had no jurisdiction of
the matter because it was on an account. and that if he had
that your petitioner was entitled to a set off for the full amount
of the damages done to the land by the said Brille for timber
actually cut & destroyed & for masts & sprouts amount to more than
the amount of the judgment against him say \$80. or 90 Dollars &
if not more as your petitioner will fully be able to prove & show
on a trial before your Honor. and your petitioner being ignorant
of his rights being advised that he was without remedy in the matter
your petitioner did not take an appeal. but submitted to the judgment
& agreed to stay it. He will be fully able to show & prove to your
Honor that manifest & great injustice has been done him. On a trial
before your Honor. He would further state to your Honor that in
the amount of consecration money paid by the said John M. Brille
there was about the sum of sixty Dollars paid in trade property of
different kinds. with some few cash notes amounting to about the sum
of five or seven Dollars for all of which the said John M. Brille
obtained a judgment against him as cash without giving your peti-
tioner any notice what nor which he is advised is contrary to law
and now he would pray of your Honor that justice may be done
him to grant him the state most gracious writs of certiorari
and commanding &c that said cause may be brought up before your
Honor & justice done him &c he will now pray. John M. Brille

This day Wm L. Allen appeared before our P. Privately one of
the acting justices of the peace for Montgomery County & makes oath
that the facts stated in the petition are true as of his own
knowledge. and there states on the information of others

The balance to be true
Subscribed & sworn to before me
the 26 April 1843 P. Brantly JP

Wm L. Allen

The Clerk of the Circuit Court in the following giving bond and security in the sum of One Hundred & forty dollars conditioned as the law directs let the writs of certiorari issue according to law

M. A. Martin

Judge R

Wi Wm L. Allen & Wm M. Shuttles bond our selves to John M. Bate in the sum of One Hundred & forty Dollars to be void if the said Wm L. Allen procures the effect of certiorari by him obtained & then any issue in the suit of John M. Bate against him, or in case he fail, or the certiorari be dismissed by the Court for informality, or want of sufficient substance or other cause, that the said Wm L. Allen will satisfy such judgment as may be given against him the 30 day of May 1843.

Sealed

Wm M. Martin Clerk

Appeal certiorari & Supercedas issued July Term 1843 Court
And at the Nov. Term 1843 present the Honorable M. A. Martin
John M. Bate

on certiorari

Wm L. Allen This day came the plaintiff by attorney & moved the Court to dismiss the certiorari

March Term 1844 not reached on the docket
July Term of said Court 1844 present the Honorable M. A. Martin
John M. Bate

on certiorari

Wm L. Allen This day came the parties by their attorneys and therefore the plaintiffs motion to dismiss being argued and by the Court fully understood
It is considered by the Court that the said motion be overruled

and at the November Term of our said Court 1824 present
the Honorable Mr. A. Martin Judge of the
John M. Bitt

Mr. L. Allen

This day came the parties by their attor-
neys and on motion it is ordered by the
Court that said Mr. L. Allen have leave to amend his petition
on the payment of all the cost of this suit & when amended
to stand on a motion to dismiss. Whereupon it is considered
by the Court that the plaintiff moves of the defendant
Mr. L. Allen for motion against Mr. M. Shethers his security
for entering the cost in this behalf expended that herein
two issues.

And on a subsequent day of the Term
John M. Bitt

Mr. L. Allen

This day came the parties by their attorneys
and the defendant moving amended his
petition the plaintiff moves the Court to dismiss the petition
which said amendment is in the words hereinafter

Amendment

As an amendment to his original petition. Given
petitioner Mr. L. Allen would most respectfully re-
spond to your Honor that the amount decided

as decided upon by the Magistrate in the trial attached to in his
original petition that John M. Bitt was entitled to recover
from the said petitioner was about seventy four Dollars per-
haps less on the same day judgment was rendered in favour
of petitioner against Frederick Bitt for fourteen Dollars which
by consent of parties that is Frederick Bitt and John M. Bitt
was placed as a credit upon the account which the Magistrate
found in favour of John M. Bitt against petitioner &
judgment was finally rendered against petitioner upon our
account for thirty three Dollars in favour of John M. Bitt

1 and upon another account for twenty seven dollars
and fifty cents under the carts in both suits amount-
ing to \$5.75. This suit was brought to never back
the purchase money for the land as stated in his original
petition. And your petitioner is informed that said John
Mc Pittle could not legally divide his accounts and
institute two suits in order to bring an account. Other
things beyond the jurisdiction of a justice of the peace
beyond the jurisdiction of a justice of the peace. In his
original petition when alluding to judgment for about
72 dollars, intended against him. He intended to have
Mortimer or allude to the true amounting to nearly 72 \$
and supposed it was so stated in his original petition
but owing to the carelessness of petitioner he supposed there
must have been some mix under standing between himself
this counsel

State of Georgia - This day personally appeared before
Mortimer County - in and Charles Bailey Clerk of the
Circuit Court of Mortimer County
and made oath in answer of him that the facts
stated in the foregoing petition are true to the best of his
knowledge and belief

Wm. Allen

From to Hester enter beyond me

the 20th Nov. 1844 that Mr. Madison R. Allen
And appearing at a special term of the Court on the 2nd Monday in December 1844
that the parties by their attorneys and

And argument being had on the matter to dismiss it
is concluded by the Court that the petition be dismissed &
that the plaintiff recover of the defendant the cost
in this behalf expended and that execution issue thereon
and the defendant upon to the justice of the peace - and the defend-
ant prayed an appeal to the Supreme Court at Nashville
and having entered into bond & security agreeably to law
the same is allowed

And by Mr. Wm. L. Allen & William B. Johnson attorneys

ourselves to be bound and indebted to John M. Britton in the sum of One Hundred and twenty five Dollars for the payment of which we bind ourselves our heirs Executors and Assigns together jointly & severally jointly by their private sealed hands in deeds & date this 11th day of December 1844

The condition of the above obligation is such that when as in an action of assumpsit prosecuted in our Circuit Court for Montgomery County by Mr. L. Allen plaintiff against John M. Britton defendant judgment was then and there rendered against by said Court against the said Allen for cost of suit on a Motion to dismiss the petition. From which said judgment the said Allen hath prayed an appeal to the Supreme Court to be held at Nashville. Now if the said Allen shall prosecute said appeal within effect or in case of default then we shall perform the judgment rendered or decreed which the said Supreme Court shall pass or make thereon in case the said appealant shall have the same decreed against him. Thus this obligation to be void. or else of full force & effect.

Given under our hands & seals this day & date above written

John

W. B. Johnson

Roll. cost

Roll app & cost of filing petition ^{petition}	25
" Motion to dismiss	25
" judgment ^{judgment} for cost	25
Appeal bond	75
over proceeds	25
Transcript of roll	1.62 1/2

43.62 1/2

John M. Britton

State of Tennessee

Montgomery County

J. M. Britton Clerk of the Circuit Court for the County

expressed as enty that the foregoing office written
pages contains a true and perfect transcript of the peti-
tion, answer and petition of proceedings had in this case of
John A. Bill against Mrs. Allen as the same now
of record in my office in Newbury whereof
I have hereto set my hand &
date of office this 13th Decr
1844
Wm. S. Bailey

John M. Bette

Mr L. Allen

Filed 4th day 1851

app. 7th Circuit

Enrolled in Book
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No. 0