

J C McMullen ~ Attachment at Law

vs
Woodly Monson ~ Writ of Error from
the Circuit Court Montgomery County
10th Circuit - Iowa District Sup Court

Attachment

page 1- On 12th February 1872 Woodlie Mon-
son obtained an Attachment from R F
Reed a Justice in Montgomery County
On the following statement -

"Whereas Woodlie Monson complains
"an oath to the undersigned a Justice
"of the Peace for said County that J C
Reed "McMullen is justly indebted to him the
page 2 "amount of one hundred and seventy
"three dollars and seventy five cents -
And the sd McMullen is a non resident
The above is a part of the Attachment

Oath

Oath

Reed "Woodlie Monson made oath that "
page 3 "J C McMullen is justly indebted to him"
"in the sum of one hundred and seventy three
"dollars and seventy five cents as specified"
"in the foregoing attachment, and that the "
"said J C McMullen is non resident."

Comments

This was an insufficient statement of the nature
of the debt - for it does not appear from
the Attachment whether the debt claimed
was due by note - account, ^{or breach of contract} nor what
was the nature of the claim - The Statute,

requires that "In order to obtain
" an Attachment the Plaintiff his agent
" or Attorney, shall make oath in
" writing, stating the nature & amount
" of his debt or demand and that his
" is a just claim - Code Section 3469
" The nature of the debt or demand
" must be stated as that it is due by
" note, account, for breach of contract
" or the like

Neither The Affidavit of Woodlie Wanson
nor the foregoing Attachment ~~does~~
~~does not~~ state the nature of the
debt whether by note account, bill
of exchange or breach of contract
and therefore there was ^{no authority}
for the issuance of the ^{issuance of} Attachment
See Sullivan vs Fagots 1st Kniskill
page 20 - Also Horry vs Anderson
1st Kniskill page 20 -

2^d
Record
page
6-
In the above case it appears
that the Attachment was returned on
April 3^d 1872 - Seized on hand -

Record
page 10
And the final Judgment was rendered
on the 24th August 1872 -

The Judgment was not stayed
for six months from the return

of the return of the execution
See Code Section 3527-

The Record at page 10 - contains the
Record following to wit "The Defendant not
page "appearing - I give conditional judgment
10 - "against him"

This entry brings it in pervious of
the above section of the Code

It further appears that the
Record stay was ordered on the 6th day
page 10. of July 1872 - to have a retroactive
- line operation - but the 6 months
from the return of the execution
April 3^d 1872 - did not expire
until the 3^d October 1872 -

Record
page 6 From and after the return of the execu-
- tion on the 3^d of April until the
order of sale of the land final judgment
August 24th 1872 - was only 3 months
and 24 days - It is therefore irregu-
lar - For these reasons the
final judgment and the order of
sale and all proceedings thereunder
are void

A copy of the published notice is
furnished so that ~~we~~ the tenant can
be informed what the Debt was

guined to do -

There is no evidence of the publication
by the production of the Newspapers nor
by the affidavit of the Printer

Heick's Chancery Practice Section 64

The Magistrate can do nothing - he can
only comply with the Law - "for nothing
" shall be intended to be within the Jurisdiction
" of an inferior Court but that which"
" is so expressly alleged"

See Kilcrease vs Rhythe 6th Henr 388

" The important thing is the publication
" itself - Heick's Chancery Practice ~~see~~ Sec 64 -

To presume that a Magistrate did any-
thing right would be a violent presu-
mption. He must therefore show the
Court how he does it.

Conclusion

The Conclusion is that all the proce-
dings are void because the Attachment
is void -

Respectfully

R W Humphreys Atty
for McMullen -

R W Leland

Woodlin Wm
Jr

vs 3 dup Court

J C McMullen
Brief for McMullen
Leland

State of Tennessee

To the Sheriff of Montgomery County, to
the Clerk of the Circuit Court of said County,
and to Woodlie Manson.

Whereas J. C. McMillen has sued out of
the Supreme Court of said State, for the mid-
dle division thereof, at Nashville, a Writ of Error,
to review and correct a judgment rendered
against him, the said J. C. McMillen and in
favor of Woodlie Manson, on the 24th day of Au-
gust 1872, ^{for the sum of} One hundred and seventy three⁷⁵/₁₀₀
dollars and costs, and has obtained from the
Honorable John L. T. Sneed, one of the Judges
of said Court, an order for a supersedeas, to
supersede said judgment.

We therefore command you that you in
no wise proceed to execute or enforce said
judgment until the further orders of said Su-
preme Court.

And have you this writ before the Jud-
ges of our said Supreme Court at Nashville
on the 1st Monday in December next and
show how you have executed the same.

Witness F. C. Dunnington Clerk of said

said Supreme Court at Nashville the 1st
Monday in June A. D. 1872.

H. C. Cunningham Clerk

By W. M. Fleming d. Co.

J. C. McMillen

as B Super & deas

Woodlie Mason on

Issued Nov. 11. 1872

Executed by returning ^{unsubstantiated} to the
New Circuit Court for
Montgomery County the
writ of Venditioni exhered
to my directed by said Court
in the case mentioned within
Dec 2nd 1872.

Wm Beaman
J. H. H.

Montgomery

State of Tennessee,

To the Sheriff of *Montgomery* County--Greeting:

Whereas, J. C. Mc Mullen has this day filed with the Clerk of the Supreme Court at Nashville a transcript of the record in the case of Woodlie Manson as J. C. Mc Mullen and has obtained from the Hon^{ble}. John L. T. Sneed one of the Judges of our said Supreme Court an order for Writ of Error and Supersedeas

to bring up the said cause from the *Circuit* Court at *Clarksville* to the next term of the Supreme Court, to be held at Nashville, on the 1st Monday in December next, for re-hearing.

You are, therefore, hereby commanded to notify *Woodlie Manson* or his attorney

to be and appear before the Judges of our said Supreme Court, at Nashville, on said Monday, in December next, and then and there show cause, if any they have or can, why the decree, judgment or order, made in such cause, should not be reversed and annulled. And have you then and there this writ, and show how you have executed the same.

Witness, F. C. DUNNINGTON, Clerk of our said Supreme Court, at office in Nashville, the *11th* day of *November* 1872, and
96th year of the Independence of the United States.

F. C. Dunnington

Clerk.

By *Wm. Fleming D.C.*

J. E. McMillen

W. H. H. H.

W. H. H. H.

W. H. H. H.

W. H. H. H.

W. H. H. H.

W. H. H. H.

W. H. H. H.

W. H. H. H.

Know all men by these Presents,

That We, *J. C. Mc Mullin & H. Bloomis*

are held and firmly bound unto *Woodlie Manson*

or *his* certain Attorney, Executor, Administrator or Assigns in the sum of

Four hundred Dollars,

for the payment whereof we bind ourselves, our heirs, executors, and administrators, firmly by these presents. This *9th* day of *November* 187*2*

THE CONDITION of the above Obligation is such, that, whereas, the above bound

J. C. Mc Mullin

this day filed with the Clerk of the Supreme Court at Nashville, a Transcript of the Record in the case of *Woodlie Manson*

vs. *J. C. Mc Mullin*

from the *Circuit* Court at *Clarksville* for a Writ of Error, and

Superedeas to the end that *said cause may be*
heard and the judgment rendered therein
reversed

NOW, if the said *J. C. Mc Mullin*

shall well and

truly prosecute said Writ of Error with effect, or in case *he* fail,

shall *pay and satisfy the whole debt damages*
and costs that may be adjudged against
him

then the above obligation to be void: otherwise to remain in full force and virtue.

Approved.

Rock G. Johnson

Clerk

J. C. Mc Mullin &
R. W. Humphreys atty
H. Bloomis secy

Caption

State of Tennessee

Be it remembered that at a Circuit Court
begun and held for the County of Montgomery
at the Court House in the City of Clarksville
on the first Monday in September Eighteen
Hundred and Seventy Two present and
presiding the Hon Jas E Rice Judge of the
following proceedings were had and entered
of record to wit,

Wooden Manson } this day came the plaintiff
vs } by Attorney and moved the
J C McMullen } Court for judgment of
condemnation in this cause.

The original papers together with the endorse-
ments thereon and the copy of the judgment
filed by R D Read Esq a Justice of the Peace
for Montgomery County are in the words and
figures as follows to wit,

Attachment

State of Tennessee Montgomery County
To any lawful Officer of said County Greeting
Whereas Wooden Manson (col) complains on
oath to the undersigned a Justice of the Peace
for said County, that J C McMullen is guilty

indebted to him the amount of One Hundred and
 Seventy ~~Three~~ Dollars and Seventy five cents,
 and Oath having been made that the said
 J C McMullen is a non resident, so that the
 ordinary process of law cannot be served on
 him, And the said Woodin Manson having
 given bond and security according to law,
 You are therefore hereby commanded to attach
 the estate of the said J C McMullen or so
 much thereof replevable on security as shall
 be of value sufficient to satisfy the said
 debt and costs according to the complaint
 and such estate so attached in your hands
 to secure or so to provide that the same may
 be liable to future proceedings thereupon
 before me or some other Justice of the Peace
 for said County so as to compel the said
 J C McMullen to appear and answer the above
 complaint of the said Woodin Manson
 when and where you shall make known to
 said Justice how you have executed this writ.
 Given under my hand and seal this 12th
 day of July 1872 (Signed) R D Read [L S]

Affidavit for State of Tennessee Montgomery County
 Attachment This day personally appeared before me R
 O'Keefe an acting Justice of the Peace for the
 County aforesaid Hoodell Manson and
 made oath that J. C. W. Museum is pretty
 indebted to him in the sum of One Hundred
 and Seventy three dollars and 45 cents as speci-
 fied in the foregoing attachment, And that
 the said J. C. W. Museum is a non resident so that
 the ordinary process of law cannot be served
 upon him, And that the matters and things
 in the Attachment are true (signed)

sworn to and subscribed Hoodell ^{his} Manson
 before me this 12th day of Feby 1872 (signed)

R. O'Keefe, J. P.

Bond for Known all men by these presents that we
 Attachment Hoodell Manson & are held
 and firmly bound unto
 in the sum of \$344⁰⁰ dollars fifty cents for
 the payment of which we bind our heirs
 executors, and administrators by these presents.
 Sealed with our seals and dated this 12th
 day of February 1872. The condition of

the above obligation is such that whereas
 the above bound Thordell Manson has this
 day prayed an attachment against the
 estate of I C McMullen for the sum of \$173⁰⁰
 + 75 cents how if the said Thordell Manson
 shall prosecute his suit with effect. or in case
 he fail therein, shall well and truly pay
 and satisfy the said I C McMullen all
 such damages as may be awarded against
 him for wrongfully suing out this attachment
 in any suit or suits to be hereafter brought
 against him, his executors, administrators, and
 shall also pay all such costs as shall be
 adjudged in this suit, then the above obligation
 to stand void, else to remain in full force and
 effect signed

Thordell ^{his} Manson. R D Ropington
 mark
 Enclosed I send February 12th 1872 came
 to hand Feb'y 14th 1872,

Justices Order Ordered that Publication be made in the
 for Publication Chronicle for the Dept to appear on the 6th day
 of July 1872 (signed) R D Read J.P.
 Officers Return And there being no property of the Dept

to be found in my County upon which to
 Levy this Attachment upon. I summon J. Harris
 before A. D. Read Esq Feb 24th to answer a garnish
 this Feb 24th 1842 (signed)

J. F. Brickhouse Dep. Shiff
 Printers fee paid to me by the Plaintiff April
 24th 1842 (signed) A. D. Read
 Filed Augst 28th 1842 (signed) Chas. D. Bailey clk
 I also garnished J. C. Loomis and summoned
 him to appear before A. D. Read Esq at his Office
 on the 3rd day of April 1842. (signed)

J. F. Brickhouse Dep. Shiff
 Officers Return This Attachment came to hand Feb 14th 1842
 and levied it upon J. C. McMullens undivided
 three fourths interest in 60 or 70 acres land
 yet unsold in a tract of land purchased by
 Buck & McMullens of N. H. Allen. Bounded as
 follows. Commencing on a white oak in the
 North East corner of the tract, thence South
 25⁰ East 500 poles to a dogwood, thence East
 5 poles to a Red Oak, thence North 100 poles to
 Martins corner, thence West 88 poles to a
 Black Oak, Raney line, thence North 278

poles to Ferrells corner, and so as not to include
 a spring owned by Samuel Edmonson, then
 West with Ferrells line 80 poles to a stake about
 6 feet S. E. of a Red Oak pointer, thence South
 40 poles to a rock, thence with the old line 140
 poles to a white Oak, thence South 12 poles to
 pointers, thence South 83² West 100 poles to
 the beginning, containing 520 acres more or
 less Buck & McMullen's $\frac{3}{4}$. S. E. $\frac{1}{4}$ recorded
 in Book No 9 Pages 245 & 246 this April 3rd
 1872 (Signed) J. Brickhouse Dep. Sheriff

Garnish d State of Tennessee Montgomery County
 J. L. Harris To J. L. Harris. I summon you to appear
 before R. D. Read a Justice of the Peace for
 said County at his Office on the 24th day
 of February 1872 to answer on oath what
 you are indebted to J. L. McMullen against
 whose property I have in my hands an attach-
 ment, in favor of Hooden Hanson which
 I find no property in my County to satisfy
 and also to state what effects of the said
 J. L. McMullen you have in your hands or

known of any person having and not pay
any debt due or hereafter to become due by
you, and retain possession of all property of
the said J. C. McMullen now or hereafter in
your custody, or under your control to
answer this garnishment to the best of your
knowledge recollection or belief, this 24th day
of July 1842 (Signed)

J. A. Brickhouse Dep. Sheriff

Enforced Executed by bearing a copy of this
within with J. L. Harris July 24th 1842 and
summoned him to come before R. D. Read
July 24th and answer as garnisher (Signed)

J. A. Brickhouse Dep. Sheriff

I J. L. Harris answer on the within garnisher
that I bought a tract of land from J. C. McMullen
a short time before he left here, I give him
my note for One Hundred and 1st day
July 1842 for ballance due on said land
the note was made payable to J. C. Loomis
I have no property in my possession belonging
to said McMullen, but he has about 90 acres
of land on the South Side of the River, which

he told me he had not sold said land was
bought of H & Allen Deby 24th of 42 signed

J L Harris

Garnishu

McLorris

State of Tennessee Montgomery County

To McLorris, I summon you to appear
before R D Reas a Justice of the Peace for
said County at his office on the 3rd day of
April 1842 to answer on oath what you
are indebted to J C McMullen against whos
property I have in my hands an attachment
in favor of Howellin Manson which I find
no property in my County to satisfy, and
to state what effects of the said J C McMullen
you have in your hands, or know of any
person having, and not to pay any debt
due, ^{or} hereafter to become due by you
and retain possession of all property of the
said J C McMullen now or hereafter, in
your custody or under your controul to
answer this garnishment to the best of
your knowledge recollection and belief
This 3rd day of April 1842 (Signed)

I A Brickhouse Deft Shift

Endowed I C Loomis being duly sworn according to law, answers that he has no personal property or effects in his hands or under his controul belonging to I C McMullen, and further that he has reason to believe that the said I C McMullen is the owner of an undivided three fourths of sixty or seventy acres more or less of land on what is called the Round Pond tract in the County of Montgomery in Tenn

(signed) I C Loomis

Novellie Hanson

vs

April 25th 1842

I C McMullen

In this case the attachment returned levied on

real estate, and the Plaintiff having made oath to the Justice of his claim for One Hundred and Seventy three & 75/100 dollars

and that the Deft is a non resident I stay further proceeding and order publication made in the Clarksville Tobacco Leaf for the Defendant to appear on the

6th day of July 1872 and make defense

(signed) R D Read, J.P.

The Defendant not appearing I give conditional judgment against him in favor of the Plaintiff for One Hundred and Seventy three & 75/100 dollars and costs I stay final judgment six months from return of attachment this 6th day of July 1872 signed R D Read, J.P.

The above judgment for One Hundred and Seventy three & 75/100 dollars and cost having been stayed six months, and Defendant having failed to shew cause why it should not be ^{made} final, I give final judgment against the Defendant, and in favor of the Plaintiff for One Hundred and Seventy three & 75/100 dollars and costs. This Augt 24th 1872

(signed) R D Read, J.P.

Bill of cost Serving & Garnishments 1.00

Serving Attachment 1.00 Issuing Attachment 1.00 Docketing 15 Judgment 50, Printers fee by plaintiff 3.00 Total Augt 24th 1872

Justices Certificate 25. Copy & certificate 25. I hereby certify

that the above is a true copy of the proceedings
had in this case as now appears on my
booket this 27th day of Augst 1872

(signed) R D Read, J.P.

Hoodlii Manson

Execution

vs

He McMullen

} State of Tennessee
} Montgomery County
} To the Sheriff or any

lawful Officer of said County. I
command you that of the good and
chattels lands and tenements of He McMullen
if to be found in your County you make the
sum of One Hundred and Seventy three & 75/100
Dollars and costs of suit to satisfy a judgment
that Hoodlii Manson (col) obtained against
him before me on the 24th day of August 1872
and pay over the same as the law directs
this 27th day of Augst 1872, Judgment 24th
day of Augst 1872 for \$173 75/100.

Serving 2 Garnishes 10^{cts}. Levy attachment 10^{cts}
Docketing 15, Judgment 50, Execution & copy cost
25. Printers fee paid by Plaintiff 3^{cts}

signed

R D Read Justice of the Peace

Officers Return Enclosed Issued Augt 27th 1872 and given
 this execution came to hand Augt 27th 1872
 And lived it upon J. C. McMullen's then fourths
 interest 60 or 70 Acres land yet unsold in a
 track of land purchased by Buck & McMullen
 of A. H. Allen. Bounded as follows commen-
 cing at a white Oak in the north east corner
 of the track thence South 25° East 530 poles
 to a Dogwood, thence East 5 poles to a Red
 Oak, thence North 180 poles to Martins corner
 thence West 88 poles to a Black Oak Rameys
 line, thence North 278 poles to Jensees corner
 and so as not to include a Spring owned
 by Samuel Camanson, thence ~~West~~ north
 Jensees line 80 poles to a stake, about 6
 feet N E of a Red Oak pointer, thence North
 40 poles to a rock, thence with the old line
 140 poles to a white Oak, thence South 12
 poles to pointer, thence South 83° West
 110 poles to the beginning. Containing 520 acres
 more or less Buck & McMullen's $\frac{3}{4}$ & Green
 $\frac{1}{4}$ Recorded in Book No 9 Pages 245 & 246
 this Augt 27th 1872 (Signed) J. Brickhouse Dep. Sheriff

And of said Thompson it is considered by the Court that said interest be and ~~it~~ is hereby condemned to be sold by the Sheriff of Montgomery County to pay said debt and cost, and also the cost in this behalf expended in this Court. And it is ordered by the Court that Venditionis Exponas issue.

Vend. Exponas. State of Tennessee Montgomery County
To the Sheriff of Montgomery County greeting
Whereas R D Read Esq a Justice of the Peace for Montgomery County issued an execution against the goods and chattels, lands and tenements of J C McWullen for the sum of One Hundred & Seventy three & 75/100 with interest thereon from the 24th day of August 1872 in favor Thosdell Manson (col), And Whereas R D Read the Justice afore said returned said execution with the original papers in said case to the September term of the Circuit Court of Montgomery County 1872, on which execution is the following endorsement

Deed Augt 24th 1842, came to hand Aug
 24th/42 And levied it upon J. C. McNeill
 three fourths interest 60 or 70 acres land yet
 unsold in a Tract of land purchased by
 Buck & McNeill of A. H. Allen. Bounded as
 follows. Commencing at a white Oak in the
 North East corner of the Tract, thence South
 25⁴ East 530 poles to a Dogwood, thence East
 5 poles to a Red Oak, thence North 180 poles to
 Martins corner, thence West 88 poles to a Black
 Oak, Runnys line, thence North 278 poles to
 Jerrells corner, and so as not to include a
 Spring owned by Samuel Cammons, thence
 West with Jerrells line 80 poles to a stake
 about 6 feet N. E. of a Red Oak point, thence
 North 40 poles to a rock, thence with the old
 line 140 poles to a white Oak, thence South
 12 poles to Pointers, thence South 83² West 100
 poles to the beginning containing 520 acres
 more or less Buck & McNeill. $\frac{3}{4}$ L. Gen
 $\frac{1}{4}$ Recorded in Book No 9 pages 245 & 246
 this August 24th 1842 (Signed)

J. B. Briskhouse Dep. Sheriff

Which said Tract of land was then and
 then condemned by said Court to satisfy
 said Judgment and costs, You are therefore
 hereby commanded to expose to public sale
 the said Tract of land so situated as afore-
 said, to satisfy said Judgment of One hundred
 & Seventy three & 70/100 Dollars with interest thereon
 from the 24th day of August 1872 Also the
 further sum of Seven Dollars and 15 cents
 cost before Magistrate and Five Dollars and
 35 cents the cost in this behalf expended.
 whereof the said J C McMullen is convicted
 as appears to us of record, And have you
 show moneys before the Judge of the 11th
~~Circuit~~ at our next Court to be held
 for Montgomery County at the Court House
 in Clarksville on the 1st Monday in January
 next ready to render unto the said Woodlin
 Manson (et al) for his Judgment and costs
 as aforesaid, And have then and then this
 writ. Witness Chas D Bailey clerk of our
 said Court at Office in Clarksville the 1st
 Monday in September 1872

Bills cash	Judgt Augt 24 th 1872		\$143 25-
	Interest from 24 th Augt/72		
	Clerk filing Justin's papers	75-	
	Docketing	10	
	Motion, 25- Judgt condemnation 150	175-	
	" for cost	25-	
	Verdicts, Exhous & orders	110	
	Copy cost on same	25-	
	Bills cash on Docket	50	4 60
	Justin R D Ream		
	Issuing Attachment	100	
	Docketing 15- Judgment 50	65-	
	Prints for p ^d by Plff	300	
	Fifa Augt 27 th 1872	25-	
	Copy & Certificate	25-	575-
	Shuff I & Brick house		
	Serving 2 Garnishes	100	
	Very Attachment	100	200
			\$11.75-
	Teste Char D Bailey clk		
	By L B Somers St		
	I Charles D Bailey Clerk of the		

4

1

Circuit Court of Montgomery County
do certify that the foregoing is a true and
perfect transcript of the record and
bill of costs remaining in my office
in the case of Hooden Manson against
J C McMillen, Given under my hand
and seal of Office this 22nd day of
October 1872

Chas D Bailey clk
By L B Burrows Df

attachment

Nature of debt & State

Ex 50000

J. C. McMillan

Wm

Woodlie Means

Filed Nov. 11. 1872

10th Law

M.T.
242

\$355

Drummond

Ex 460

Oct. 10, 1872



Ex 50000

Money

Ex 50000

To the Clerk of the Supreme Court at
St. Louis.

You will give notice of error
and Supremacy in the within case upon
the terms prescribed by law.

John F. D. Sned

Judge

Oct. 25th 1872

Benjamin T. ...