Maeder, John v. Whittelsey, Charles, Primm, Wilson 1852 St. Louis 176/8

28 Account

Circuit entered $287 default j. for P&W for services rendered as attorneys $287

Contract

No op.

State of Missouri }
Saint Louis County } ss.

Be it remembered that heretofore to wit on the 16th day of August A.D. 1851 there was filed in the Office of the Clerk of the Saint Louis Court of Common Pleas within and for the County aforesaid a petition in the words and figures following to wit:

Petition "Wilson Primm and Charles C Whittelsey } Plaintiffs vs John Maeder Defendant } St Louis Court of Common Pleas St Louis County. September Term 1851.

Plaintiffs state that at the request of the defendant they rendered him services as attorneys at law, in the following cases and matters as will appear by the following account.

John Maeder

To Primm & Whittelsey Dr.

1847 Sep. 8.	To making settlement in the Probate Court	$ 5.00
" 9.	" Services vs. Beekman before Justice Cruess	5.00
1848 Feb. 29.	" " ads Dillon in ejectment in Circuit Court	20.00
May 5.	" " in Circuit Ct. in discharging attachment of Anton Schultz for contempt on your retainer	15.00
1849 " 15	To Services in Circuit Court in defending suit in Chancery of your tenant Schultz ads Schlick on your retainer	25.00
1849 Dec 10.	" Services in Circuit Court in suits in Ejectment for trespass & in Chancery for injunction in the name of Wilson Primm your trustee vs. Hoster, Hogard, Schlick Schultze & Merlein for your lots in Carondelet Commons	200.00
1850 Sep 28	To Services in Common Pleas in settling suit in Ejectment against you by Dillon calling several times upon Dillon and Bates ———	25.00
Nov. 20.	To Services in Circuit ads Memeir for injunction motion to dissolve &c argued & continued & settled by you	20.00
Dec 6.	To Services in Circuit Court in suit of Jonas.	

2 Mäder vs Rosina Mader for divorce on your retainer 50.00
$365.00

1850 Sep 28 Cr. By Cash of Shff collected
of Hogard & als 77.37
Balance — $287.63

Plaintiffs aver that said charges are reasonable, and that said services were rendered the defendant at his request.

They therefore ask judgment against the defendant for the said sum of Two hundred and Eighty seven dollars and sixty three cents with interest from the first day of December 1851. Chas. C. Whittelsey in p.p.

County of St Louis, Sct.

Charles C. Whittelsey being sworn upon his oath says that he believes the above petition and the matters therein stated to be true, Chas. C. Whittelsey.

Sworn to and subscribed this 16th day of August 1851, before me — P. Tippett, Clerk.

Summons The State of Missouri, To the Sheriff of St. Louis County Greeting: We command you to summon John Maeder to appear before the Judge of our St. Louis Court of Common Pleas on the first day of the next term thereof, to be held at the City of St. Louis, within and for the County of St Louis, on the Third Monday of September next, then and there to answer the complaint of Wilson Primm & Charles C Whittelsey as set forth in the annexed Petition; and have you then there this Writ. L.S. Witness Philip Tippett Clerk of our said Court, with the Seal thereof hereto affixed at Office, in the City of St. Louis this 16th day of August in the year of our Lord One thousand eight hundred and fifty one. P. Tippett Clerk.

Sheriff Return Sheriffs Return

Executed this writ in the County of St Louis this 23d day of August 1851 by delivering a certified copy of this writ and petition by the Clerk to John Maeder the within

named defendant. Henry T. Bell Sheriff by R Darling Deputy and afterwards the following proceedings were had to wit:

Judgment by Default

September Term 1851 — September Twenty fifth 1851

Wilson Primm and Charles C. Whittelsey, as John Maeder & now at this day come the plaintiffs by their attorney, but the defendant although duly warned and solemnly called comes not but makes default whereupon it is ordered that the plaintiffs petition be taken against him as confessed, and on motion to them being required the Court doth assess the damages of the plaintiffs sustained by reason of the premises in their petition at the sum of Two hundred and Eight Seven dollars and Sixty three cents, It is therefore considered by the Court that the plaintiffs recover of the defendant the damages aforesaid in form aforesaid assessed and also their costs herein expended and have therefor Execution.

Motion to set aside Judgt Overruled

And afterwards the following proceedings were had to wit:

September Term 1851 January 29th — 1852

Wilson Primm and Charles C. Whittelsey vs. John Maeder & The defendants motion to set aside the judgment by default herein being heard and the Court being fully advised of and concerning the premises it is ordered that said motion be overruled.

Appeal Granted.

And afterwards the following proceedings were had viz:

September Term 1851 January 31st 1852.

Primm & Whittelsey vs. John Maeder. & On motion of the defendant an appeal is granted him from the decision herein to the Supreme Court, whereupon the defendant files a bond according to law, which is acknowledged by the Obligors and approved by the Court.

Appeal Bond

Know all men by these presents, that we John Maeder as principal and Louis C. Pratt and R S. Blennerhassett as Sureties are held and firmly bound unto Wilson Primm & Charles C. Whittelsey in the sum of Six hundred dollars, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, firmly by these presents, Sealed with our Seals, and dated at St Louis, this 31st day of January A.D. 1852. The condition of the above obligation is such, that whereas the said John Maeder has appealed from the judgment rendered against him, and in favor of said Wilson Primm and Charles C. Whittelsey in the St Louis Court of Common Pleas for the sum of Two hundred and Eight Seven dollars and Sixty three cents together with costs. Now if the said appellant will pay all costs and damages that may be awarded against him occasioned by such appeal, and shall prosecute his appeal and shall perform such judgment as shall be given by the Supreme Court, and such as the Supreme Court may direct the St Louis Court

4 of Common Pleas to give, and if the judgment or any part thereof be affirmed, that he will comply with and perform the same so far as it may be affirmed, and will pay all damages and costs which may be awarded against him by the Supreme Court then this obligation to be void, otherwise to remain in full force and effect. J. Maeder Seal
L. G. Picot Seal R. S. Blennerhassett Seal Approved in open Court January 31st 1852. Attest P. Sappett clerk.

Bill of Exceptions

And the following Bills of Exceptions was filed January 31st 1852 viz:
In the St Louis Court of Common Pleas. September Term 1851
Wilson Primm and Charles C Whittelsey vs. John Maeder. Be it remembered that on the 16th of August 1851 the plaintiffs filed their petition in this Court as follows (inserted herein in proper place) and afterwards to wit on 25th day of September 1851 in said term a Judgment by default was taken in said cause (inserted herein in its proper place); that on the 29th day of January 1852 in said term the defendant filed in this Court his motion to set aside said default and for stay of proceedings and affidavits in support of said motion as follows: "In Com. Pleas St Louis Co. Sept. Term 1851

Motion to set aside Judgment by Default

Primm & Whittelsey
vs.
John Maeder } Defendant states he wishes to set aside the judgment by default rendered in the above cause because at the time said suit was instituted and before the time for Defts Answer had expired he called upon Wilson Primm One of the Defendants and told him he had been sued in his name, said Primm told him that he would see Mr. Whittelsey and that there should be an amicable settlement between the parties. That he knew there were mutual accounts between us, but that his indebtedness to this affiant exceeded that of this affiants to him or to the firm of Primm and Whittelsey. Said Primm assured this affiant he should not be prejudiced by reason of a want of answer in said cause and

5 that the whole matter should be settled without trial.
Relying upon these assurances of one the Plaintiffs this
affidavit did not employ Counsel to defend same until
he learned a judgt. by default had been taken aga-
=inst him which for the reasons set forth he prays
the Court to set aside — as he has a just and
meretorious defence to the same and will be able to
show a much larger indebtedness to him than is cla-
=med by the Plaintiffs. J. Maeder

Affidavit of Deft. Sworn to and Subscribed before me this
28th October 1851 — P. Tippett Clerk.

Wilson Primm and
C.C. Whittelsey Plaintiffs
vs.
John Maeder Defendant
} In the St. Louis Court of Common Pleas.

John Maeder the above
named defendant being duly sworn says, That at the
time this affiant filed his former affidavit to wit
on the 28th of October 1851, Wilson Primm one of the
Plaintiffs informed this affiant that this suit should
be settled and promised to attend to it without delay
that this affiant relying on said promise omitted to
enter his motion on the law Docket of this Court
That thereafter the said Primm left his home for the
City of Washington, and on the day that he started, he
again informed this affiant that there would be no
difficulty about this case, that nothing would be done
until after his return from Washington when said suit should be dismissed that the said
Primm has not yet returned, and the co Plaintiff Whitt-
=elsey utterly refuses to stay the proceedings until the return
of said Primm but insists on the collection of the
Execution issued on said Judgement. J Maeder

Sworn to and Subscribed before me Janry 29th 1852
P. Tippett Clk

And on the same day C.C. Whittelsey one of the Plaintiffs

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Affidavit of C.C. Whittelsey

filed his affidavit: Common Pleas. Primm and Whittelsey vs. John Maeder et. Charles C. Whittelsey being sworn upon his oath says, that he has read the affidavits of defendant, and avers that he ought not to be bound by any statements therein made. That said affidavits shew no defence to said suit at law or equity, as the accounts between Mr Primm and defendant cannot in ber affect this affiant. He says that before this suit was bought, the said defendant frequently promised to pay this affiant for the services in the petition set forth, and never alleged that he did not owe the money. That after the suit was commenced the defendant for the first time informed this affiant that he had claims against said Primm, and this affiant told defendant, that that could not affect this affiant's claim as he had an interest in it. This affiant states that Primm & Taylor had claims against the said Maeder to the amount of two or three hundred dollars, which now belongs entirely to said Primm. That said Primm was trusted for said Maeder for some property, so that in that way, there may be some claims between the parties but with these transactions this affiant had nothing to do and knows nothing of the same, but that Mr. Primm told affiant, that Maeder was indebted to him the said Primm, more than any amount due by Primm to Maeder. That the account of Primm and Taylor was still due.

Affiant farther says, that defendant met him in the street a day or two ago, and offered to pay the plaintiffs' bill, if affiant would give up some papers and deeds in this affiants possession, which defendant claims belong to him, being deeds to Wilson Primm for certain lots in the Carondelet Commons, with an undeclared and secret trust in favor of said Maeder in all the lots mentioned but one which Primm claims as his own, or in some way claims a lien

7 and this affiant knowing that there were disputes between Primm and Maeder about said lots and otherwise did not feel disposed to surrender said deeds, until the bill was paid, as said deeds, are not of record,

This affiant states that after suit he gave defendant notice, and told him to make his defence, but there is no defence, neither do the affidavits of defendant show any legal defence, and defendant dare not deny the claim and account of Plaintiffs Defendant has had time sufficient to compromise with said Primm since this suit was commenced, and thereby to destroy plaintiffs claim, the accounts between the parties plaintiff being unsettled, and the said Primm being in debt to the firm of Primm Whittelsey as this affiant believes although the accounts are unsettled, And farther saith not

Chas. C Whittelsey

Sworn to and subscribed this 29th Jany 1852, before me

P. Tippett Clk

Which motion being heard and considered by the Court the same is overruled to which decision of the Court the Defendant excepts and prays that this his bill of Exceptions may be signed &c

Sam. Treat, Judge &c.

State of Missouri,
Saint Louis County } ss. I, Philip Tippett Clerk of the St. Louis Louis Court of Common Pleas within and for the County aforesaid Certify the above and foregoing to be a true and perfect Transcript of the Record and proceedings in the case of Wilson Primm and Charles C Whittelsey against John Maeder as the same now remain of Record and on file in my Office

In Testimony Whereof I hereto set my hand and affix the Seal of said Court at Office in the City of Saint Louis this 20th day of February A. D 1852.

P. Tippett Clk

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(28) 75

March. T. 1852

Wilson Simm and
Charles C Whittelsey
Respondent

vs

John Mader
appt.

Transcript of Record

Filed March 2nd 1852
Wm Glanville, Clerk

$3 Paid by Deft

Supreme Court
March Term 1852

Primm & Whittelsey } Respondents
vs
John Maeder } Apellant

This was a suit brought by the Respondents upon an account for professional services as attorneys. The account was set out in the petition, and no answer being filed, judgment was taken for want of answer, and the damages assessed by the court.

Towards the end of the ~~February~~ September Term, ~~the plain~~ and after the execution was in the hands of the Sheriff, and near the beginning of the Feb. T. the defendant filed his affidavit to set aside the default, setting forth no grounds of defence, not denying the justice of the plaintiffs' claim, but alleging, that Primm one of the ~~defend~~ plaintiffs was indebted to the defendant and that Primm had promised to settle the matter, and that he the defendant need not trouble himself about the suit.

The plaintiff Whittelsey filed a ~~counter~~ counter affidavit, setting forth, that the defendant had promised him to pay the account, and had promised the Sheriff to pay it, that Primm & Whittelsey were or had been partners, and that the claim of defendant against Primm, was no defence nor offset against the joint claim of Primm & Whittelsey, that there was no just defence to the action.

The court overruled the ~~de~~ defendants motion and defendant appealed.

Primm & Whittelsey
vs
John Maeder

Supreme Court
March Term 1852

Whittelsey for plaintiffs

It is apparent from the record, that there is no defence of any kind to this suit, and that the appeal was taken simply for delay, as ~~Counsel~~ the counsel for defendant and defendant himself, have both acknowledged to the plaintiff Whittelsey, since the appeal was taken.

Plaintiff therefore moves the court to affirm the judgment with ten per cent damages as provided in the 34 sec. Chap 139. Code 1845.

Whittelsey
in pro. per.

Primm & Whittelsey
Respondents

vs

John Maeder Appt

Filed 2nd April 1852
Wm L Glanville, Clerk.