King, John B; Starns, John vs. Lauden, George B. 1856 McDonald Co. 13th Cr. 207/14
Lauden, Burt G.

Old 71/33

Affirmed

Debt- L owed K for bill of medicine, didn't show up so judgment made by default
have no bill of exceptions so can't be tried by S.C.

THE STATE OF MISSOURI, ss.

The State of Missouri, To the Judge of the Thirteenth Judicial Circuit in said State, **GREETING:**

WHEREAS, In the Record and Proceedings in a certain cause lately pending in the Circuit Court of McDonald County, in the Judicial Circuit aforesaid wherein Geo. B. & Burt G. Loudenback were plaintiffs & Geo. B. King and John Starns were defendants

in an action of manifest error hath intervened, to the great damage of the said defendants as by their complaint, we are informed.

NOW, we being willing that the error, if any there be, should be corrected, and full and speedy justice done to the parties aforesaid, in that behalf, **COMMAND YOU,** that you send to us, certified under your seal, the record and proceedings in the cause aforesaid, as fully as the same remain of record before you in said Court; so that we may have them before us at our Supreme Court, to be begun and held at the City of Jefferson, in the county of Cole, in said State, on the second Monday in January next; so that our Judges of our Supreme Court, on inspecting the record and proceedings aforesaid, may cause to be further done therein, for correcting the error; what of right and according to law ought to be done.

Witness, WILLIAM E. DUNSCOMB, Clerk of our said Supreme Court; at office, in the City of Jefferson, the third day of January in the year of our Lord one thousand eight hundred and fifty six

Wm E Dunscomb

SEAL OF THE SUPREME COURT OF MISSOURI

Mr. Hendrick, Attorney for defendants requested this writ to be attached to the papers

Jany 3 1856

Wm E Dunscomb

George G Louden
& Bart G Louden } Plaintiffs
Against } In the Circuit Court of McDonald County
John B King } Mo.
John Starns } Defts

The plaintiffs states that on the 10th day of March A D 1852, at the County of McDonald, the defendants owes, and stands indebted, to the plaintiffs for a large amount, of Drugs, and medicines towit; defendants owes, plaintiffs, 1½ doz Indian, expectorants eight dollars per doz, twelve dollars, dollars, half dozen hair tonic eight dollars, per dozen four dollars, 1½ alterative doz at four dozen per dozen, Six dollars for ¼ doz of hair die, four dollars per doz one dollar, for ½ dozen Female elixir at four dollars per dozen, two dollars, for 2 dozen boxes aque pills at four dollars per dozen eight dollars ½ dozen pile remedy Six dollars per dozen three dollars, 2 dozen Compound Carminative balsam, at two dollars per dozen four dollars, for four dozen Compound Lam Vermifuge two dollars per dozen eight dollars, for Six dozen Indian S, Pills one dollars and Seventy Five Cents per dozen, Ten dollars & fifty Cents; one dozen all Healing Solve, at Two dollars per dozen two dollars; 2 dozen Cherokee liniment at two dollars per dozen four dollars! Plaintiff avers that the full amount of Drugs and medicines received by the defendants on the 10th day of March 1852, and for which the defendants owes plaintiff is Sixty four dollars & fifty cents for which plaintiffs asks Judgement; Plaintiff also states that on the 25th of October 1852 at the County of McDonald the aforesaid owes plaintiff; for Drugs and Medicines received towit to ½ dozen Indian expectorial eight dollars per dozen twelve dollars to one and a half dozen alterative four dollars per dozen Six dollars, one and a half dozen female

Elexire four dollars per dozen two dollars, to one dozen Ague Pills four dollars, to ½ dozen Pile remedy Six dollars per doze three dollars to 2 dozen Compound Carminative balsam at 2 dollars per dozen four dollars to two dozen Tonic Vermafuge, two dollars per dozen four dollars to four dozen Indian S Pills at one dollars seventy Cents per dozen, seven dollars, one dozen all healing salve at two dollars per dozen Two dollars 2 dozen Cherokee Lenemement two per dozen four dollars, — Plaintiff avers that the defendants owes him in the full sum of forty eight dollars for which plaintiff ask Judgement Plaintiff states, that defendants is intitled, to a deduction of the costs of Transportation, of the above medicines, Plaintiffs avers that they have called on said defendants for the medicines now on hand, and said defendants for the medicines now on hand and said have refused to deliver to the same to the said plaintiff or their agent, therefore plaintiffs ask Judgement for the sum of one hundred & twelve dollars & fifty cents for his debt and damages for the detention for the detention of the same,

Signed J. M. Barker plaintiffs attorney

I J. M. Barker plaintiffs attorney makes oath & says that he believes the above petition, and the matters therein as stated are true, J M Barker

Sworn & Subscribed ~~two~~ before me this 24 day of August 1854

Benj Ross Clerk

Geo G Louden }
and Bart G Louden } Plaintiffs }
Against } In the Circuit Court of McDonald County
John B King & }
John Starns } Defts }

The State of Missouri County of McDonald } ss
The State of Missouri To the Sheriff of McDonald County
Greeting You are hereby Commanded to Summon John
B King and John Starns, that they be and ane appear
before the Honorable Judge of our McDonald Circuit Court
in the Court House, in the Town of Pulliday County of
McDonald and State of Missouri, on the first day of
the November Term in course which will commence, on
the 2nd monday after the fourth monday in October 1864
and be holden in the Court House, in the Town of Pulliday
County of McDonald and State aforesaid then and
there to answer the petition of said plaintiffs in a
plea of Debt and damages and have then and there
this writ, and Certify how you have executed
Service on the same

In testimony whereof I Benj Ross, Clerk
of the Circuit Court of McDonald County
and State of Missouri have here to
set my name and affixed my private
seal there being no official seal yet
provided, at this Office in Pulliday
this 31 day of August 1864

Benj Ross Clerk

On the back is the following indorsement to wit
Filed Nov 6th 1864. Benj Ross Clerk } Georg G Louden
& Bart G Louden. vs Petition Summons John B King
and John Starns. and also on the back thereof
indorsed the following Sheriffs return.

to wit I William C Price Sheriff of McDonald County, do hereby certify that I executed the within summons on the within named John B. King by reading the same to him and in his presence, on the 30th day of September 1854

William C Price Sheriff
Fee $1 00

I William C Price Sheriff of McDonald County hereby certify that I executed the within summons on the within named John Starns by reading the same to him and delivering to a copy of the petition and writ on the 29th day 1854

William C Price Sheriff
Fee one dollars

George G Louden & Bart G Louden Jr plaintiffs
against In the McDonald County Circuit Court civil action November Term 1854
John B King & John Starns Defts

Among the record and proceedings of the said Court the following proceedings were had to wit, Now at this day the above cause comes on to be heard, and the defendants being thrice solemnly called comes not but makes default and plaintiff not requiring a Jury the cause being submitted to the Court sitting as a Jury and the Court after hearing the evidence do find for plaintiff the sum of one hundred and twelve dollars & fifty debt with interest & costs of suit, it is therefore considered and ordered by the Court the said plaintiff have and recover of and from said defendants his debt with interest & cost laid out and expendended in this cause for which execution may issue

George G Louden & Bart G Louden plaintiffs
against civil action May Term McDonald
circuit Court 1855
John B King & John Starns Defts

This day comes defendants by attorney and by leave of the Court files herein his motion, to set aside the Judgment heretofore awarded in this cause, to wit

Because the same was irregular 2nd, Because the proceedings had were irregular, illegally & void & for other causes

L Hendrick attorney for plaintiff

George G Louden & Bart G Louden plfts
against in the McDonald circuit Court. May 1855
John B King & John Starns defends

This day comes the plaintiff by his attorney and moves the Court to overrule defendents motion to set aside the Judgement heretofore awarded in this cause the premises being seen and fully understood by the Court. It is therefore considered by the Court that defendants motion to set aside the Judgement, heretofore awarded in this cause be overruled,

State of Missouri County of McDonald set
I Absolem A Hensley Clerk of the circuit Court within and for the County and State aforesaid, do certify that the within and foregoing is a true complete and perfect copy from the record in my office together with a copy of the original papers in the cause. George G Louden and Bart G Louden against John B King and John Starns

In testimony whereof I have hereunto subscribed my name and affixed my private seal there being no official seal of the said Court yet provided at clerks office in Rutledge done this 17 day of December A D 1855

A A Hensley Clerk

17. ~~67.~~

Geo. B & Burt G Louden

vs

Jno. B. King & Jno. Starns pes

filed Jan. 3 1856

Wm E Dunscomb

Clerk

McDonald

13th

In the Supreme Court
Jan. Term 1856

Lauden, deft. in error
against } Error to McDonald
King & Starns, plf. in error

The plaintiffs in error says the court below erred in not first stating the facts, and then the conclusion of law upon them, as required by law, wherefore he prays a reversal.

Gardenhire
for plfs in error

Lauden

vs } Enar to McDonald

King & Stamo

Assignment of Errors

filed Jan. 26 1856

Wm E Dunscomb

Clerk

Gardenhire, for plf in error.

II. Their Trial was by the court, and the facts should have been first stated, and then the conclusion of law upon them, New Code, Art, 15, Sec. 2.

Louden, deft in error

res } Error to McDonald

King & D Tarno, pl in Error

Brief for plf in error

filed Jan. 26 1856

Wm E Dunscomb

Clerk

In the Supreme Court
George G Louden & } January Term 1856
Burt G Louden } respondents
vs Error to McDonald
John B King & } county
John Stovers } plff in error

This is an action upon an account for drugs and medicines

Defendants being served with process failed to appear and judgment was rendered against them by default

Plaintiffs not requiring a jury submitted the cause to the Court & the Court found the amount due one hundred and twelve dollars & fifty cents

The clerk has opened into the transcript a motion purporting to be signed by defendants counsel, to set aside the judgment — but whether the motion was filed in court is not apparent. There is no bill of exceptions —

Defendants bring the case here by writ of Error

F. P. Wright for plffs

There is nothing on the record to warrant the court in disturbing the judgment below. Defendants should have filed a bill of exceptions — Elliot vs Page & Rubb vs Abernathy & Thomasson ~~19~~ 20 Mo 263 10 Mo 257 — Ws. vs Gamble & Bates

But there is no error if there had been a bill of exceptions, the seven was sufficient

67–

George G Louden &
Burt G Louden
vs
John B King &
John Stovers

Plaintiffs
Brief

filed Jany 25. 1856
Wm E. Dunscomb
Clerk

F. P. Wright
Atty

George G. Landen &
Bait G. Landen Plffs } civil action in
vs } the ~~Barry~~ McDonald circuit
John B. King & } Court
John Starms Defts }

The Plffs & their atty J. M. Barker will please take notice that the Defts have sued out a writ of Error in this case returnable to the Jan. Term of the supreme court next - Decr 31th 1855 -

L. Hendrick atty for Defts.

I Return the within Notice served
by delivering J M Barker a ~~Notice~~ copy
of the Notice on the 5th day of
January 1856 J. N. Fly Sheriff

Copy

Louden & another, vs King & another

This was an action for a bill of drugs and medicines furnished by plaintiffs as they allege to the Defendants — The defendants failed to appear and answer — though they were served with process — Judgment was rendered against the defendants by default; and the plaintiffs not requiring a jury; they submitted the enquiry of damages to the Court — The court assessed the damages of the plaintiffs to the sum of One hundred and twelve dollars and fifty cents — This judgment by default was rendered at the November Term of the Circuit Court for the County of McDonald in the year 1854; At the May term 1855 the defendants made their motion to set aside the judgment by default; The Court overruled this motion — There are no exceptions taken to any action of the Court; no bill of exceptions filed — and yet the defendants have brought this case here by Writ of Error; It is not every motion made in a cause that becomes part of the record, even though the Clerk should put it down among the proceedings — In order therefore to put the motion in this case made to set

the judgment, aside, or the record, so as to become a part thereof, it was necessary to do so by excepting to the overruling of the motion by the Court and having a bill of exceptions signed stating that fact— Nothing is saved on this record by which the defendants can raise a question in this Court— Their Counsel here insists, that the Court failed to find the facts of the case— To that we answer, the Court was not trying any issue— as is provided for in the 15. Article second Section of the Code of Practice— but was merely assessing the damages as it was lawful to do, when the plaintiff submitted the finding of the damages to the Court, without a jury; under 12 Article of the code—

There is nothing in the transcript shewing any error committed by the Court in overruling the defendants motion; even if we consider the motion and action on it as forming part of the record proper in the case— ~~No error has been~~ imputed upon before us, except the failure of the Court to find the facts; which is not necessary in this case; as there was a judgment

by default —

The judgment below must be affirmed — Judge Leonard concurring — Judge Scott absent

John F. Hoyland

47.

Louden et al

vs

King et al

Opinion

Ryland

filed Feby 16 1856

Wm E Drummond

Clerk

To the Clerk of the Supreme Court of the State
Missouri (Jefferson city)

Dr Sir I have understood that the last Legislature passed a law that a party taking a case to the S.C. should pay Ten dollars to the Clerk of said Court before he would docket the case

I herewith send a transcript of the cause of Harmon vs Walker Tol. If you will docket it I will send $5,00 dollars by L. Hendrick or Some Layer that may be employed to attend to it your Court and reside so soon as I can get the paper If cant be docketed in time to be tryd at the July term docket it for the January Term apprise me of the fact

Respectfully yours &c
John B [illegible] attorney
[illegible]

THE STATE OF MISSOURI, SCT.

THE STATE OF MISSOURI TO THE SHERIFF OF THE COUNTY OF Mc Donald IN SAID STATE, **Greeting:**

Whereas, Geo. B and Burt G Londen

on the sixteenth day of February in the year eighteen hundred and fifty six at our Supreme Court for the State of Missouri aforesaid, before our Judges of said Court, recovered against Geo. B King and John Starns the sum of six 30/100 dollars for their costs and charges by them expended in a certain suit wherein the said Burt and Londen were defendants in error and the said King and Starns were plaintiffs in error which the said defendants in error were adjudged, as appears to us of record. **Therefore,** We command you, as we have before commanded, that the goods and chattels, lands and tenements of the said John B King and John Starns in your bailiwick, you cause to be made the aforesaid costs, and that you have the same before the Judges of our said Supreme Court, on the second Monday in January next, to render unto the said Londens the costs aforesaid, and that you certify to our said Judges you execute this writ, and have you then there this writ.

Witness William E. Dunscomb, Clerk of said Supreme Court, at office, in the City of Jefferson twenty third day of March in the year of our Lord one sand eight hundred and fifty eight

Wm E Dunscomb

Come to hand this 3 day of April AD 1858

D T Lauderdale
Sy

Received on the within
Writ five Dollars

Samuel Baker

Received ~~on~~ the within fees in full

D. T. Lauderdale Shirpff
by Saml Baker Delt

Alias to No. 34
Cant. J 1857

January Term 1859

Geo B & Bert G Lauder
Vs Exec.
Geo B King also Stairs

Cost

Mrs D Dorin .30
Wm E Dunscomb 6.00
Prior suits 2.00
$8.30

Satisfied in full

Mrs Donald

34

THE STATE OF MISSOURI, SCT.

THE STATE OF MISSOURI TO THE SHERIFF OF THE COUNTY OF McDonald IN SAID STATE, **Greeting:**

Whereas, Geo. B & Burt G. Louden

on the sixteenth day of February in the year eighteen hundred and fifty six at our Supreme Court for the State of Missouri aforesaid, before our Judges of said Court, recovered against Geo. B. King and John Starns the sum of six $\frac{30}{100}$ dollars for their costs and charges by them expended in a certain suit wherein the said Burt & Louden were defendants in error and the said King & Starns were plaintiffs in error which to the said defendants in error were adjudged, as appears to us of record. **Therefore,** We command you, that of the goods and chattels, lands and tenements of the said John B. King & John Starns in your bailiwick, you cause to be made the aforesaid costs, and that you have the same before the Judges of our said Supreme Court, on the second Monday in January next, to render unto the said Burt & Geo. B Louden the costs aforesaid, and that you certify to our said Judges how you execute this writ, and have you then there this writ.

Witness, William E. Dunscomb, Clerk of said Supreme Court, at office, in the City of Jefferson, the twentieth day of August in the year of our Lord one thousand eight hundred and fifty six

Wm E Dunscomb

34

January Term 1857.

Geo. B & Burt G. Londen

v } Execn.

Ono. B King & Ono Stearns

Costs

Mc D Dennis	30
Mc E Dennis	6.00
this writ	1.00
	$7.30

Not satisfied

Alias March 23 57

Mc Donald