

Jefferson County Circuit Court
Case Files - Civil
January 1877, No. 26

Box 36 Folder 37

Bryan, Charles

vs.

Brink, Wesley R.

McDonough, Leo

McCormack, R. K.

Brink, McDonough & Co.

Debt, account

Debt \$81.50 for hire of horses
and buggies used to deliver maps;
John H. Thomas, William H. H. Thomas
garnishees on attachment; depositions
from Illinois

M *Brink, McDonough & Company*

To **CHARLES BRYAN, Dr.**

PROPRIETOR OF THE LIVERY, SALE AND FEED STABLES,

DE SOTO, JEFFERSON COUNTY, MO.

May	16	John of Lover and buggy	two days	\$ 50 00	
October	8	Went to R. 2 horses & buggy	12 1/2 days @ \$3.00 per day	37 50	
"	17	1 line of two horses & buggy	9 " " "	27 00	
"	21	" line " two horses & buggy	4 " " "	12 00	
Sept	26	" " " one horse & buggy	1 " " "	2 50	
"	27	" " " one horse & buggy	1 " " "	2 50	
"	28	" " " Do Do	1 " " "	2 50	
"	29	" " " Do Do	1 " " "	2 50	
		Credit		91 50	
		By one copy of Jefferson County letter To Balance due		81 50	10 00

Charles Bryan, Plaintiff
vs
Wesly R. Brink
J. Leo McDonough &
R. K. ^{McDonough} ~~McDonough~~
composing the firm
of Brink, McDonough
& Company, Defendants

In the circuit court of
Jefferson County Missouri
Plaintiff states that the defendants
Wesly R. Brink, J. Leo McDonough
and ~~R. K. Brink~~ ^{McDonough} ~~McDonough~~
are now and were in the month of
May 1876 and for several years
prior thereto & ever since had been
partners doing business as Atlas
Map publishers, ~~that being facts~~
~~partners~~ under the firm
name of Brink, McDonough and
Company and being such partners
and doing business under their
said firm name from the month
of April to the last of October
in the year 1876 in Jefferson County
Missouri they during that time
became indebted to the Plaintiff
for the hire of Horses and Buggys

which were by them hired from
Plaintiff for the purpose of
carrying on the business of said
firm before specified and used
by them in the prosecution of their
said business in the sum of ninety
one & $\frac{50}{100}$ Dollars and are entitled
to a credit thereon for one atlas
map of said company with the
sum of Ten Dollars leaving
due Plaintiff ~~on his said account~~
~~of~~ by defendants Eighty one & $\frac{50}{100}$
Dollars the particulars of
all which with the items and
dates of the several items for
which defendants owe Plaintiff
as well also as the said credit
thereon fully appear by an
itemized account herewith
filed and prayed to be taken as
a part of this petition which
sum of Eighty one & $\frac{50}{100}$ Dollars
is still due Plaintiff and
unpaid although on the ~~4th~~
10th day of October 1876 Plaintiff
demanded payment thereof
from defendants and for which with six
percent interest from said demand the
Plaintiff ~~demands~~ demands
Judgment ~~of~~ Jos. Williams
Attorney for Plaintiff

Charles Bryan, Plaintiff

vs

Wesly R. Brink,
J. Leo, McDonough,
R. K. McDonough
Composing the firm of
Brink, Mc Donough & Company
Defendants

In the Circuit Court of
Jefferson County Missouri
We Charles Bryan as Principal
and Joseph J. Williams and R. W. McMullin
as Securities acknowledge our-
selves bound to the State of
Missouri in the sum of one
Hundred and Sixty Three Dollars
for the payment whereof we
bind ourselves, our heirs, Executors
and Administrators, the condition
of the above obligation is that
Whereas Charles Bryan as
Plaintiff is about to commence a
suit by attachment in the Circuit
Court of Jefferson County Missouri
against Wesly R. Brink, J. Leo,
McDonough & R. K. McDonough
composing the firm of Brink,
Mc Donough & Company defendants

returnable to the next term
thereof wherein the amount
sworn to is eighty one & $\frac{50}{100}$
Dollars; now if the said
Plaintiff shall prosecute his
said action without delay and
with effect, refund all sums
of money that may be adjudged
to be refunded to the defendants
or found to have been received
by the Plaintiff and not justly & costs
due to him; and pay all Damages,
that may accrue to any
defendant or Garnishee by
reason of the Attachment or
any process or proceeding in
the suit or by reason of any
judgment or process thereon
then this obligation is to be
void; otherwise to remain in
full force

witness our hands and seals

Charles Bryant seal

John Williams seal

Wm. Muller seal

Approved and Filed December 15 1876.

C. Ho. Marine Clerk Circuit Court

Charles Bryan Plaintiff
vs

Wesley R. Brink
J. Leo. M. McDonough &
R. K. McDonough, Composing
the firm of Brink, McDonough
& Co, Defendants

In the Circuit Court
of Jefferson County
Missouri

This affiant the Plaintiff
in the above entitled cause
states that the Plaintiff in the
above entitled cause has a
just demand against the
defendants therein now due
and that the amount which
this affiant believes the
Plaintiff ought to recover
after allowing all just credits
and set-offs is Eighty one & $\frac{50}{100}$
Dollars and this affiant
has good reason to believe and
does believe that the defendants
are non residents of the State
of Missouri and also that
said defendants are about ^{fraudulently} to
conceal, remove or dispose of

Their property and effects so
as to hinder or delay their
creditors

Sworn to and
subscribed before } Charles Bryan
the December }
14th 1876

Wm. M. Mullin
Judge of Probate of Jefferson County Mo.

Filed Dec. 15-1876,

C. H. Whipple

Clerk

State of Missouri, } SS.

County of *Jefferson*,

OFFICE OF CIRCUIT CLERK.

The State of Missouri.

To the Sheriff of

County—GREETING:

We command you to attach *Wesley R Brink & Leo McElanough & R R McElanough composing the firm of Brink & McElanough & Company*

by all and singular *their* lands and tenements, goods, chattels, moneys, credits, evidences of debt and effects, or so much thereof as shall be sufficient to secure the sum of *Eighty one*

Dollars and *51* Cents, with interest and costs of suit, in whose

hands or possession soever the same may be found, and that you summon the said *Wesley R Brink & Leo McElanough & R R McElanough composing the firm of Brink & McElanough & Company*

that *they* be and appear at the next Term of the Circuit Court, before the Judge thereof, on the first day of said Term, to be holden at the *Town* of

Stilwell and State of Missouri, within and for the County of

Jefferson on the *Second* Monday of *January*

next, and then and there to answer the complaint of

Charles Bryan

as set forth in the annexed petition.

And also, that you summon all and every person in whose hand or possession soever any personal property, rights, goods, Chattels, moneys, credits, evidences of debt, or effects, may be found, or who may be named by the Plaintiff or *his* attorney, as Garnishees, and particularly

John L Thomas and Wm H H Thomas

that *they* be and appear before the Judge of our said Court, on the first day of the Term aforesaid, then and there to answer unto what may be objected against them. And have you then and here this Writ.

Witness,

Chas. Brink

Clerk of our

said Circuit Court, and the Seal thereof hereunto

affixed, at office in *Stilwell* this *15th*

day of *December*, in the year of our

Lord, one thousand, eight hundred and *seventy six*.

Chas. Brink

Circuit Clerk.

By

Deputy.

SHERIFF'S RETURN.

~~Served the within Writ by~~

I executed the within writ in Jefferson County Missouri on the 15th day of December 1876 and garnished by summoning John L. Thomas & William H. H. Thomas as garnishees in this cause by declaring to them & in their presence and hearing that I did ~~summon~~

summon them & each of them to appear at the next Term of the circuit Court of Jefferson County Missouri to be held at Hillsboro in Jefferson County Missouri on the second Monday in January 1877 to answer such interrogatories as may be exhibited to them by the Plaintiff & I did not read said writ to them because they each expressly waived the reading thereof to them and by declaring to said John L. Thomas & William H. H. Thomas that I did attach in their hands all debts due by them to the defendants or so much thereof as would be sufficient to satisfy the debt and interest and Damages & costs sued for by the Plaintiff in this cause

John Williams

Sheriff

Jefferson

County.

4572

Van Bock, Barnard & Tinsley, Printers and Stationers, St. Louis.

No.

ATTACHMENT WRIT.

Jefferson Circuit Court.

Returnable January Term, 1877

Charles Bryson

Plff.

vs.

Brink, McElmough

& Co

Def't.

original

John Williams

Sheriff fee \$1.00

Charles Bryan
vs

Wesley R. Brink
J. Leo McDonough &
R. K. McDonough
comprising the
firm of Brink,
McDonough & Co,

In the Circuit
Court of Jefferson
County Missouri

To John L. Thomas and
William H. H. Thomas
Garnishees

Interrogatory first:

At the time of the service
of the Garnishment had
you in your possession
or under your control
any property, money or effects
of the defendants? If so
state what property, how
much and of what value
and what money or effects
effects:

Interrogatory second,
At the time of the service
of the Garnishment did
you owe the defendants
any money or do you
~~owe~~ owe them any
now? If so ~~state~~ how
much, on what account,
and when did it become
due? if not due yet due
when will it become
due?

Joseph Williams
Attorney for Plaintiff

Charles Bryan
(ms)

Brink, McDougall
, & Co

Interrogatories
to John L. &
W. H. Thomas
Garnishers

Filed January 15th 1877.

C. H. H. H. H.

Clerk

Charles Bryan Plaintiff
vs
Wesley R. Brink et al
Defendants

In the Jefferson Circuit
Court. In Vacation.

Now at this day come
said Defendants and for
Answer to the petition of the Plaintiff
heretofore filed in this behalf
state that they deny the each and
every allegation therein contained.

John H. Howard Esq
Atty. for Defs.

10 + 11

Charles Bryan

Burck W. Doughty
V. L.

Admission

Filed Mar 29th 1877
C. H. Haine
Clerk

STATE OF MISSOURI, }
COUNTY OF JEFFERSON.

To

James Duckett

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the *13th* day of *Sept*, 1877, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy now pending in our said Court, wherein *Chas Bryan* is Plaintiff, and *Chas Brink Mc Donough & Co* is Defendant, on the part of *Plff*, and herein you are in no wise to fail.

Witness, C. THO' HORINE, Clerk of our said Court, with the seal thereof hereof affixed, at office, this day of, A. D., 187 ..

CLERK.

Bryan
n
Boinks Co

Filed Sept 13 1847
Chas. H. Haine
Clerk

James H. H. H. H.

I serve the within by
reading in the hearing of
James H. H. H.
L. H. H.

STATE OF MISSOURI,
COUNTY OF JEFFERSON.

To

Edman Brown

Wm J Brown *Edman Horine*

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the 13 day of Sept., 1877, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy now pending in our said Court, wherein

Chas Bryan

is Plaintiff, and *Edwin McAlmough & Co*

is Defendant, on the part of *Off.*; and herein you are in no wise to fail.

Witness, C. THO' HORINE, Clerk of our said Court, with the

seal thereof hereto affixed, at office, this 7 day

of *Sept.*, A. D., 1877.

Chas Horine

CLERK.

Bryan
10

Brink M Loughlin

I served the within by
reading in the hearing of
Wm J Brown and
Charles Decker

W. F. Bryan

Filed Sept. 13th 1877
Chas. Horne
clerk

STATE OF MISSOURI, }
COUNTY OF JEFFERSON.

To

Charles Bryan

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, ~~on the~~ day of *September*, 1877, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy now pending in our said Court, wherein

Chas Bryan

is Plaintiff, and *Brink M'Donough & Co*

is Defendant, on the part of *Deft.*; and herein you are in no wise to fail, ^{as accounts} and bring with you the books, relating to your livery business with *Brink M'Donough & Co.*

Witness, C. THO' HORINE, Clerk of our said Court, with the seal thereof hereto affixed, at office, this *13* day of *Sept.*, A. D., 1877.

C. Tho' Horine CLERK.

Bryan
17
Mc Donough & Co.

Shiff per 50

Served 13th Sept

STATE OF MISSOURI, }
COUNTY OF JEFFERSON.

To

James Shacketo

You are hereby commanded, that setting aside all manner of excuse and delay, you appear before our Circuit Court, for the County aforesaid, on the 13 day of Sept, 1877, at Hillsboro, then and there to testify and the truth to say in a certain matter of controversy now pending in our said Court, wherein

Chas Bryan
vs
Dunk, McLaughlin & Co.

is Plaintiff, and
is Defendant, on the part of Opp.; and herein you are in no wise to fail.

Witness, C. THO' HORINE, Clerk of our said Court, with the seal thereof hereof affixed, at office, this 3rd day of Sept, A. D., 1877.

C. Tho' Horine

CLERK.

I Executed the within writ in Jefferson county Mo on the 4th
of ^{our James Hackett} September 1847 by leaving a true copy of the same at
his usual place of abode with a member of his family
over the age of fifteen years

John Williams Sheriff
by John Cook Deputy

Dryan

Brink & Hough Co.

P

James Hackett.

Sheriff fee

NOTICE TO TAKE DEPOSITIONS.

Charles Bryan

In the *Jefferson*
Co ... Court for

Plaintiff

AGAINST

*Brink, McDonough and
 Company*

the County of *Jefferson*
 State of *Missouri*. *Sep. Term 1877*

Defendant

TO THE ABOVE NAMED *Charles Bryan or Jas. J. Williams*

his atty of Record, You are hereby notified, that depositions of witnesses to be read in evidence in the above entitled cause, on the part of the *Defendant* will be taken at the Law office of Robert A. Campbell in the Town of Vandalia in the County of *Hayette* *Illinois*, on the *3* day of *September*

—, A. D. 1877, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day; and that the taking of said depositions, if not completed on that day, will be continued from day to day, at the same place, and between the same hours, till completed.

Service of the above notice is hereby acknowledged, and issue of writs, and all exceptions as to time, waived.

August 13th 1877
~~*J. J. Williams*~~
J. J. Williams
Attorney for Defendant

John L. Thomas
attor for Defendant

State of Illinois }
Fayette County, }^{ss}

Depositions of Witnesses, produced sworn and
Examined, on the 3rd day of September in the year of our
Lord 1877, between the hours of Eight & 9 O'clock in the
forenoon, and 5 & 6 O'clock in the afternoon, of that
day, at Vandalia in the County of Fayette and State
of Illinois before me, R. A. Campbell a notary Public
in and for said Fayette County, in a certain Cause
now depending in the Circuit Court of the County of
Jefferson in the State of Missouri, between Charles
Bryan Plaintiff, and Brink, McDonough and
Company Defendants, on the part of the defendant

Cyrus Fairchild of lawful age, being produced
sworn and Examined on the part of the defendant
deposes, and says

Interrogatory 1st State your name, age, occupation & place
residence.

Ans. Cyrus Fairchild, 40 years. Canvassing agent
for Brink, McDonough & Company. at present
reside in Fayette County, Ills.

Int 2^d Are you acquainted with the Plaintiff Charles
Bryan. & the Defendants Brink, McDonough & Company
& if so how long have you known them or either of them.

Ans I have known Brink, McDonough & Company 5 years
have known Plaintiff since February 1876

Int. 3. Did you or did you not have any business transactions with the Plaintiff Charles Bryan during the year 1876. if so state fully, what, when & where and in whose presence, if in the presence of any one. & while you were the agent of the Defendants Bank McDouough & Company.

Ans. I did. I hired a team from him, (the Plaintiff) once or twice during the months of February & March 1876. I had charge of the Canvassing men in Jefferson County, Mo as General agent for Bank McDouough & Company.

Int 4. Did you have a conversation with the Plaintiff, relating the responsibility of the Defendants for Livery Hire & Hotel Bills of Canvassing men of Bank. McDouough & Company if so state fully such Conversations, Place & Time.

I did. I told Plaintiff that the Company (the Defendants) were not responsible for Horses hired by any of the men who were or might be canvassing for Defendants. or any person who might be engaged by said Defendants in the delivering of Atlas maps for said Company (the Defendants). I told Plaintiff that all the men employed by Defendants were paid a stated amount and each man paid his own expenses.

Int. 5 State if you had the conversation mentioned in Ans to Int 4. before or after Pilling commenced to

The Atlas Maps & Co. said Company in said Jefferson Co.

Ans Before he commenced, it was 8 or 9 months before. The conversation was in said Jefferson Co. Mo. at Plaintiffs Stable in the presence of W. S. Spencer in February 1876. It occurred at that time from the fact Spencer was then hiring a horse & I had been instructed by the Company to do inform Livery & Stable men. Subsequent to this time I had quite a number of talks with Plaintiff on this subject of hiring horses &c. & he gave me to understand that he fully understood that Defendants were responsible for the Livery hire of their men
C. Fairchild

Subscribed and sworn to before me this 3rd day of September A.D. 1877.

R. A. Humphreys

Notary Public

William S. Spencer of Lawful age, being produced, sworn & examined on the part of Defendants deposed &c. & said

That his name is William S. Spencer, 42 years of age, a resident of Jerseyville, Jersey County Illinois. That he is acquainted with both Plaintiff and Defendants in this case. That in February 1876, he was a canvassing agent for Brint McDonald & Co. (deposited) in Jefferson County, Mo. That he was present at a conversation between the Plaintiff & the witnesses
C. Fairchild

At the Stables of Plaintiff in & Sato in Jefferson
County Mo in the month of February 1876. in
which Conversation Plaintiff was informed
by Cyrus Fairchild (the Genl Agt for Defendants
in Canvassing said Co.) That defendants would
not be responsible for any of the hire
of men in their employ. as the Company (defects)
paid their men a stipulated amount & the
men were to pay their own expenses including
livery & hotel bills.

Int Was This Conversation before or after Pilling
the delivering ^{ag} of said Defendants went to said
County to deliver the Atlas maps for said defendants.

Ans This was before he went into the said County
to deliver said Atlas maps. It occurred at
the time Defendants agents were Canvassing
said County for the sale of said Atlas Maps.

Int Did you while Canvassing said County as
aforesaid ever hire any horse for the work of
Canvassing from Plaintiff if so against whom
was the account & who paid said bills

I did. The account was against me &
I paid the bills. W. J. Spencer

Subscribed and sworn to before me this 3^d day of
September 1877

R. H. Campbell

Notary Public

I Robert H Campbell a Notary Public in
and for the State of Illinois, do certify, that in
pursuance of the within annexed notice, came before
me at Vandalia in the County and State of Illi-
sai, Cyrus Fairchild, and William J Spencer
who were by me severally sworn to testify the
whole truth of their knowledge touching the matter
in controversy aforesaid; that they were
Examined, and their Examination reduced to writing
and Subscribed by them respectively, in my
presence, on the day between the hours, and at
the place in that behalf first aforesaid, and
their depositions are now herewith returned.

Given at Vandalia in the County of Fayette
and State of Illinois this 3^d day of September
A.D. 1877

R. H. Campbell
Notary Public

Notarial Costs &c.

\$ 5.50

Witnesses

Wm. J. Spencer

1.00

Cyrus Fairchild

100

\$ 7.50

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Bryan
Pink & Co.

Filed Sept 10 1877
O. W. Waine
Clerk

215 218
576.89 1412, 180, 192, 201, 202

STATE OF ILLINOIS,

Fayette

COUNTY, } ss.

I, *A. S. Coon* Clerk
of the *County* Court, in and for said

County, the same being a Court of Record, do hereby certify that

R. H. Campbell

whose signature appears to the foregoing ~~proof of acknowledgment~~ ^{*disposition*},
was at the date of taking said ~~proof~~ ^{*disposition*}, a Notary Public in said County, as evidenced by his Commission
of Record in my office. And I further certify, that I am well acquainted with his handwriting and
know that the signature above, purporting to be his, is genuine, and that said acknowledgment is
taken in accordance with the laws of Illinois.

In Testimony Whereof, I hereunto set my name and affixed the seal
of said Court at *Vandalia*, in said County,
this *3d* day of *September* A. D. 187*7*.

A. S. Coon Clerk.

Deputy.

State of Missouri }
County of Jefferson { S.S. -

Mrs Kate Brown living duly sworn says, that she is the wife of R. C. Brown who was employed by Brink, McDonough & Co in making an Atlas of Jefferson County Missouri - in the month of September 1876; that during the month of Sept. aforesaid she was boarding at the house of M. R. Brown in the town of Defot. in said County, and that at the same time Mr Leo M. McDonough of said town was also boarding and residing at the house of said M. R. Brown.

Affiant further says that one morning in the month of Sept. 76 - she was in the same room at said Brown's house with Leo M. McDonough, R. L. McDonough and S. Hilton, when S. B. Donald and Robert Pilling came into the room, and S. B. Donald introduced to said Leo M. McDonough the said Pilling, and at the same time the said Pilling handed to Mr Leo M. McDonough a letter of introduction and an order for employment of Mr Pilling from Mr Brink of the

from at Brink, McDonough & Co.
that she heard the letter read
by Mrs L. McDonough, and
remembers the contents
or purport of the same -
that she remembers that at
same time Mrs L. McDonough
gave Mr Pilling a package
of Atlas contracts or subscriptions
to collect, and assigned to him
his territory to work in. That
soon afterwards Mr Pilling
went out of the house, and
in the course of an hour came
back to the house with a span
of horses & a spring wagon -
and, taking a supply of Atlases,
gubriated his wagon and
drove away -

Affiant further says that on the
day that said Pilling called
at the house as aforesaid she
knew of her order & knowledge
that Mrs L. McDonough did
not leave or was not out
of the house of said M. R. Brown
until after said Pilling left;
that she went down to break -

fast on the morning of that
day with - Mrs Leo McDonough
and after breakfast she returned
with him to his room, and
assisted him in ascertaining out
the contracts for Athens until
Pilling left for his territory;
that she remained in the room
with said Leo McDonough, S. Hilton
& R. L. McDonough from before the
arrival of Pilling until he left
for his territory, and that the
said Leo McDonough was in
said room during all of said
time engaged in writing
and ⁱⁿ correspondence in connection
with said Athens.

Mrs. Kate Brown.

Subscribed and sworn to before
me this 17th day of Sept. 1877

H. M. Tyler
Justice of the Peace

State of Missouri
County of Jefferson {S.S.-

Mrs M. R. Brown
being duly sworn says that she is the
wife of M. R. Brown and now resides
and for more than three years last
past has resided, in the town
of Defits in said County; that
in the month of September 1876-

Sir M'Donough, Mr & Mrs R. C. Brown
were boarding and lodging or
rooming at her house - that
one morning in the month of Sept^r
1876 - she was in company with -
Mr Sir M'Donough, Mrs Kate Brown,
and R. L. M'Donough & S. Hutton
when S. B. Donald came into the
room with - Robert Pilling, that
when they came in S. B. Donald
introduced Mr Pilling to Mr
Sir M'Donough, and Mr Pilling
kissed Mr M'Donough a little,
that soon afterwards Mr Pilling
went away from the house
and she did not see him again.

Affiant further says that on
the morning of Mr Pilling's ar-
rival Mr Sir M'Donough had not

from out of her house before
Pittling arrived, and did
not go out of the house
until after Mr Pittling left.
that Mr Pittling left the house
about 8 o'clock, and that
Mr McDonough did not go
away from the house until
nearly noon of that day.

Mrs M B Brown

Subscribed and sworn to before me
this 17th day of Sept 1877
S. M. Tyler
Justice of the Peace

Chas Bryan

to

Brink & Co

Filed Sept. 17 1877
at Tho. Moore

Clarks

Charles Bryan Klautz

Benick M. Donough

The M. Donough does said
Defendant makes oath & says
that he is one of the firm of Benick
M. Donough & Co: that all the
members of said firm are
non-residents of Missouri: that
he has had charge & management
of this case from its commence-
ment: that since this trial he
has discovered evidence which is
material to the defense to wit - The
testimony of Mrs. Kate Brown &
Mrs. M. R. Brown whose affidavits
are also filed in this case: that
they did not know that said evidence
would appear to the fact that it
~~was not known to the fact that it~~
~~was not known to the fact that it~~
~~was not known to the fact that it~~
that he was taken by surprise when Plaintiff
this man Hackett swore to the effect
that he (offrant) had personally heard
the same & was not prepared to meet
such testimony: that if he had
known they were going to swear as
they did he should not have gone

to trial without further testimony -
that if a new trial be granted ^{separately} ~~then~~ he
can procure the testimony of the
aforesaid witnesses as well as that of
R. L. McDougall & L. Nelson & J. B.
Donald to contradict said Bayon
this mon: That he supposed when
he went to trial the issue of fact
to be tried was as to the authority
of the agents of the Company to
bind the Company for livery
time & did not suppose that any
one would swear that he (affiant)
had become personally responsible
for such hire

Geo. W. McDougall

sworn to and subscribed

before me Sept. 27 1877.

Le Tho Norine Clerk Circuit.

Chas Bryan

to

Brink & Co

Filed Sept. 17 1887

@ Tho' Horne

clerk

Given

If the Court should find from the evidence that J. Leo M. Donough hired the team for whose service this suit was brought and that at the time of such hiring the other members of the firm were not known to Plaintiff & that Plaintiff did not know the firm name & that in such hiring he gave credit alone to M. Donough & not to said firm then the finding should be for Deft.

2

Given

that if one Frozier hired a horse buggy
of Plaintiff about May 1876 on his
own behalf then the charge for the
same should not be made
against Defendants although
the Court may find that they
afterwards agreed to pay it and
such charge should not be allowed
for two reasons. 1. Because the
agreement is within the Statute of
frauds & the proof does not as that
item support the petition

Bryan

3

Brink M'Donough & Co

The Court declares the law to be that if the Court sitting or a Jury should find from the evidence that Pilling & Donnell who drove the teams for which defendants are sued were the mere agents of Brink M'Donough & Co in delivering Hogs for them: that they were employed at a stipulated Commission for the their service, were to pay their own livery and ^{and had no authority to bind the firm} other expenses, and used the said teams for their own use then the finding should be for defendants for all charges on account of them.

Given

4

If the Court sitting as a Jury should find from the evidence that the Company of Buick McDougall & Co. was composed Wesley Buick, Geo. McDougall & R. K. McCormack that Geo. McDougall had charge of the delivery of Maps of the Company in Jefferson Co. Mo. but was prohibited by the firm from binding it for livery

and that Plaintiff's agent who might be employed by Plaintiff's agent to send McDougall down in the fall of 1880 should be for Defendants although the Court may further find from the evidence that Geo. McDougall did hire the team for Pitkin & Downell.

By your
of
Brink Wal
Instructions
to Dept.

Filed Sept. 17 1871
O. H. W. H. W. H.
O. H. W. H. W. H.

Bryant
vs
McDonough & Co. }

The court declares
the law to be that if
J. L. McDonough one of the
firm of Brink McDonough
& Co. hired the Horses & Buggies
mentioned in the account
sued on from Plaintiff
for the purpose of being
used in the business of the
firm of which he was a
member to deliver their
maps and that the same
were so used by agents of
~~Plaintiff~~ said firm under
authority from said J. L.
McDonough then in
that case the Plaintiff is
entitled to recover on said
account for so much as in
the opinion of the court
he has proved.

Given

~~John~~ Bryan Plaintiff

vs.
Orinck M. Donough & Co

Defendants

In the Jefferson Circuit Court
Sept Term 1877.

Now at this day comes the
Defendants & move the Court
to reverse the judgment in
this Cause & grant them a new
trial for the following reasons.
1. Because the verdict is
against the evidence & weight of
evidence.

2. Because the Court gave
improper instruction in part
of Plaintiff & refused proper in-
structions on part of Defendants.

3. Because Defendants have
discovered new evidence not
known to them before the trial
of this Cause, a knowledge of which
evidence comes to them since
this trial which evidence will fully
appear by the affidavits of J. H. Co
M. Donough & Mrs Brown &

herewith filed and pages
to be taken as a part of this motion.
John L. Howard & Bro
Atty for Defendants

4. Defendants were taken by surprise
by the testimony of Plaintiff. His son
Hackett & hence they were not
prepared to meet this testimony that
J Leo M'Donough personally hired the
teams for the time of which this suit is
brought or will more fully appear by the
affidavit of J Leo M'Donough herewith
filed.

John L. Howard & Bro
Atty for Defendants

Chas Bryan
v
Breck M'Donough
Plff

Motion for a
new trial

Filed Sept. 17th 1877
Chas. H. Hume
Clerk

Bryan
Binks, M'Donough & Co. }
Marine clerk,

July 2 1877 14 files 7⁰ bind 5⁰ writ. 1⁰⁰ app. 1⁰ order. 2⁰ \$ 2.50
interrog 2⁰ leave to ans. 2⁰ interrog 2⁰ .40
app. 1⁰ leave to ans 2⁰ cont. 2⁰ .55

May 77. doct 1⁵ cont. 2⁰ .40

Sept. 2 1877 doct 1⁵ order to pub. dep 3⁵ order to amend 2⁰ 70
sub. 3⁵ indgt. 5⁰ doct 3 indgt 3⁰ 1.15
motion for new trial 2⁰ rule 2⁰ 40
indgt voliar 5⁰ doct indgt 1⁰ 60
leave to file bill exp & c. 3⁵ 4 depas 1⁰⁰ 1.35
218⁰ costs 4⁰ Sat. 2⁰ 75 \$ 8.80

Rec^d my fees of Thomas & Bess Apr. 8 1878.

Le Tho Marine clerk

John Williams Jeff. Shif 1⁰⁰ r. Shif 1⁰⁰ calls. 4⁵ \$ 2.45

Rec^d my fees John Williams Sheriff

Wm Clark 1 day 1.00

Jos R Brown 1 " 16 m. 2.28

Elizabeth Bryan 1 - 16 - 2.28 } 4.56

James Hackett 1 - 16 2.28

7.84
19.09

Rec^d fees of Bryan & Hackett
June 12th 1878.

Charles Bryan