

Jefferson County Circuit Court
Case Files - Civil
October 1835

Box 2 Folder 27

Loper, James

vs.

Magenis, Arthur L.

Assumpsit

Debt \$500; change of venue from
St. Charles County on change of venue
from St. Louis County; depositions;
bill of exceptions

We the auditors appointed by
the Court in the case of
Loper against W. Gennis find
a bal^{er} due plaintiff of
Twenty five dollars.

Wm Renshaw
Hiram Church

John P. Bilton

St. Hales

6th May 1834

James Loper

vs

Arthur L Magenis

In this case the deft contends that a new trial ought to be granted the verdict being against law and evidence, and the decisions of the court on the points made erroneous.

~~Non est~~

It is a general rule, with respect to admissions as indeed in all other cases, where an entry or declaration is entire and one part is capable of being explained and qualified by another that the whole must be taken as evidence. —

If a defendant admit the receipt of money and say at the same time that it was due to him heff can not recover on such admission alone Carver v Tracy 3 Edw Rep 427. 1 Dal 240 see also. 9 Johns Rep 141. 10 do 45. 385.

11 do. 151 —

Randall v Blackburn 5 Taunton 245. C (1 Eng Com Law Rep 92). —

P. Loper

Loper
v
Magnis

Sichs Filed 6th May 1834

James Loper }
vs
A.L. Magenes }

The said Plaintiff James Loper, for answer
to the interrogatories exhibited by the defendant says
as to the first interrogatory

I had other Counsel generally for the management
of my law business, and intended to engage such Counsel
to defend me in the suit mentioned in this question,
but on the application for the particular instance
of Mr. Magenes I did agree that he might appear
for me in defence of said suit

Second & Third Interrogatories -

I stated to said defendant that I did not wish
to make any thing out of the loan office transaction -
that I had lent out the certificates which I had borrowed
I was willing that my Counsel, if successful
in the defence should collect & retain the amount,
informing & informing Mr. Magenes that I wished
Mr. Bates to appear for me. After the decision
of the case in the Circuit Court, Mr. Bates did
appear for me & argue the cause in the Supreme
Court of the state, & when decided against me in
the Supreme Court, did cause the same to be
taken to the Supreme Court of the U. States,
in which Court it was finally decided in my
favor, Mr. Magenes having done nothing in the
cause after the same was removed to the Supreme
Court of the state, as far as I know or believe. It
is true that Mr. Magenes when expressing a wish
to appear in my cause, did assure me that

he could, if necessary, would have it attended to in the supreme Court of the U. States or thereabouts, by means of some particular friend of his, I think he said Mr Emmett of New York, but nothing was done by him or his friend.

This respondent further answering says that he did deliver to Mr. Magner the notes of the persons to whom he had lent the loan office certificates mentioned above, to be collected, amounting, as well as he can now remember to about \$ How much he has collected or what he has done with the notes, this respondent does not know, but believes he has collected at least the sum of \$.

This respondent, in consequence of what had passed between Mr. Magner & him, supposed for a long time, that he, Mr. Magner, had collected the amount of the notes, & paid at least the half thereof to Mr. Bates, & continued in that belief, until to his surprise, Mr. Bates called on him & demanded payment of fees for attending to said cause in the supreme court of this State of the U. States, and I had to pay him & did pay him fees for the performance said services.

Fourth I do not recollect whether Mr. Magner informed me of the action of ejectment mentioned in the fourth interrogatory. I know of that suit, & was informed I do believe that the same was never tried, but was continued from term to term, to await the decision of the Supreme Court of the U. States, on the principle, & upon the event of that decision was dismissed, or suffered to abate, or discontinued.

Fifth - I did inform Mr. Mageret that I wished Mr. Baty to appear for me in said cause, I should have placed the business in his hands at the beginning, but I could not find him at that time, I yielded to instances of Mr. Mageret, I agreed for him to appear.

James Loper

James de la
Ad. Mappes
de la Mappes

8550
Thee 6th May 1834

James Loper

A. L. Magennis

} The defendant moves

the court to grant a new trial -

because the verdict is contrary to law
and evidence -

The court erred in deciding that defendant
was bound to prove the indebtedness of
defendant to the amount claimed - ~~but~~

The admission of the defendant must be
taken as true altogether it was a denial
of plaintiffs right - and the burden devolved
on the plaintiff to prove the indebtedness
of defendant

Wm. H. Loper for deft

Ames deher

Ad Thapsent

Mo for d. d.

Julia May 27th 1833
Reprints etc

Scho. Stead & May 1834

2 That the admission of the defendant given
in evidence in this case as to the value as then
and the jury ought to find for the defendant
unless it appear to the satisfaction of the jury
that the part of the admission which
states the ~~amount~~ ^{contents} of the paper to which
doubt is entire -

3 That defendant is not in this case
bound to prove the land on value of
his professional services -

Filed 6th May 1834

James Loper

Arthur L. Magenis

In Illinois Circuit Court

Be it remembered, that at the trial of this cause the plaintiff to maintain the issue on his part introduced as a witness Eddie Bates Esquire, who testified that he as counsel for Loper the plaintiff had argued a cause in the supreme court of this state and in the supreme court of the United States that the suit was originally commenced in the Illinois Circuit court by the State of Michigan against the plaintiff Loper for the recovery of one thousand dollars borrowed at one of the loan offices, that the judgment of the circuit court was in favour of the State, and that judgment was affirmed by the supreme court of the State and afterwards reversed by the supreme court of the United States: The witness further stated that he understood from Loper both before and after he borrowed the money from the loan office, that he Loper did not wish to make money out of the transaction, his sole object being to test the right of the state to recover on such contracts; and the witness also understood that, the fair value of the paper borrowed was to be paid by Loper to his counsel in the event of it should be decided that the State could not recover.

The same witness also stated that some time after the final decision of the cause by the supreme court of the United States he called upon Loper for payment of his fees, and Loper informed him that the defendant Magenis had collected money of his (Lopers) and was to pay the fees due the witness. After several conversations of the same import, the witness at the request of Loper called on Mr Magenis the defendant and stated to him what Loper had said, in relation to the collection of the money and the payment of the fees of the witness, the defendant was at the same time informed that the witness did not wish to be understood as dunning him, but

3. That there is no evidence of such a demand as will enable the plaintiff to recover -

The court sustained the second proposition of the defendant and overruled the first & third. And decided that although the admission of the defendant must be taken altogether, yet he the defendant was not entitled to a credit for an amount beyond the value of the services mentioned by the witness as having been rendered for the plaintiff and that the burden of proving the value of those services devolved on the defendant. That he was chargeable with two hundred dollars admitted to have been received and the court must ascertain the value of the services from the evidence and allow a credit for the value of so ascertained and no more - And there upon a verdict was rendered for the plaintiff. To all which decisions of the court the defendant by his counsel excepts and prays the court to sign & seal this his bill of exceptions which is done accordingly this tenth day of May 1833

Wm. C. Carr 

James Schuyler }
v. } Bill of Exchange
A. J. Maguire }

Filed May 18th 1833
H. G. Smith Clerk

Schuyler
Filed 26th May 1834

James H. H. } The defendant, moves to set aside the verdict & find for
Adrian & Magnus } the jury in this case - because it is, against Law
2. it is against evidence - 3d - is against the construction of the
court - & the Court must uphold the verdict -

By ~~the~~ for deft -

Lames Hope }
or
Al Magenis }

Receives for a New Trial

filed Dec 23rd 1833

Algamble ckr

Algamble LL 1833

Filed 6th May 1834

State of Missouri }
County of Saint Louis } ss. Be it Remembered that heretofore to wit; on the Eighth
day of March in the year of our Lord One thousand Eight Hundred and thirty
two James Loper by his attorneys filed in the Office of the Clerk of the
Circuit Court for the County of Saint Louis his declaration against Arthur
L. Magenid, which said declaration is in the words and figures following to wit;
"Saint Louis County to wit; In the Circuit Court - March Term 1832. -

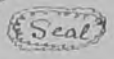
James Loper complains of Arthur L. Magenid of a plea of trespass
upon the case upon promises: For that whereas heretofore to wit on the
Seventh day of March in the Year of Our Lord One thousand Eight Hun-
-dred & thirty at St. Louis in the county aforesaid the said Arthur was
indebted to the said James in a large sum of money to wit five hundred
dollars, for money by the said Arthur before that time had and received
for the use of the said James, and being so indebted he the the said Arthur
in consideration thereof, undertook and then and there faithfully promised
the said James to pay him the said sum of money whenever he the said
Arthur should be thereunto afterwards requested. Yet the said Arthur
although often requested has not paid the said sum of money nor any
part thereof but so to do has hitherto wholly neglected and refused & still
does neglect & refuse - Wherefore the said James says he is injured & has
sustained damage to the Value of Five Hundred dollars & therefore he
brings his suit & good proof &c - Bates & Allen atty. "

and afterwards to wit on the said Eighth day of March in the year aforesaid
the said Clerk of the said Circuit Court endorsed thereon a writ of summons
which is in the words and figures following to wit;

The State of Missouri

County of Saint Louis ss

To the Sheriff of the County of Saint Louis Freeling

We command you to summon Arthur L. Magenid that he be and appear before
the Judge of our Circuit Court at the next term thereof to be held at the City of St.
Louis within and for the County of Saint Louis on the Fourth Monday of March
instant then and there to answer unto James Loper of a plea of Trespass upon
the case upon promises, wherefore the said James says he is injured and has
sustained damage to the Value of Five hundred dollars and have you then
there this writ  Witness Archibald Gamble clerk of our said Circuit
Court at Office this 8th day of March in the Year Eighteen Hundred and thirty
two - Archibald Gamble Clerk - and afterwards to wit at the return term
thereof the Sheriff of the County of Saint Louis returned the said writ & declaration
into court with his Return endorsed in the words and figures following to wit;

"Served this writ on A. S. Mageniz on the 8th day of March 1832, by offering to read to him the writ & declaration which he refused to hear & acknowledged Service - In & K Walker Shff - and afterwards to wit; at the said March term of the said Circuit Court in the year Eighteen Hundred and thirty two on the twenty eighth day of March in the year aforesaid the said defendant filed his pleas to the action aforesaid which said pleas are in the words and figures following to wit; -

1st Plea

County of St. Louis - to wit;

Arthur S. Mageniz,

vs

James Loper

In the Circuit Court - March Term 1832

And the said Mageniz by his attorney comes and defends the wrong and injury when & says that he did not undertake and promise in manner and form as the said James hath above thereof complained against him and of this he puts himself upon the country - Mageniz atty for defendant And for a further plea in this behalf the said Mageniz saith that the said James ought not to have or maintain his action aforesaid thereof against him the said Mageniz because he says that the said James before and at the time of the commencement of this suit to wit at the county aforesaid, was and still is indebted unto him the said Mageniz in a large sum of money to wit the sum of five hundred dollars for the work and labor, care and diligence of the said Mageniz as an Attorney and counsellor at law bestowed in and about the business of the said James and for the said James and at his special instance and request. which said sum of money so due and owing from the said James to the said Mageniz exceeds the damage sustained by the said James by reason of the non performance by him the said Mageniz of the said supposed promises and undertakings in said declaration mentioned, out of which said sum of money so due and owing from the said James to the said Mageniz he the said Mageniz is ready and willing and hereby offers to set off and allow to the said James the full amount of the said damages according to the form of the Statute in such case made and provided. and this he the said Mageniz is ready to verify, wherefore he prays Judgment of the said James ought to have or maintain his action aforesaid thereof against him the said Mageniz - Mageniz atty for dft. -

and afterwards to wit at the said March term of the said Circuit Court on the Tenth day of April in the Year Eighteen Hundred and thirty two the said plaintiff by his attorneys filed his Replication to the second plea of the said defendant which is in the words and figures following to wit;

"And the said plaintiff as to the said plea of the said dft by him secondly above pleaded saith that he the said plttf by reason of any thing by him the said dft in that plea alleged ought not to be barred & precluded from having & maintaining his aforesaid action thereof against him the said dft because he says that he the said plttf was not nor is indebted to the said dft in manner,

Replication
to Second Plea

& form as the said def^t hath above in his said second plea alleged & this he the said pl^{ff} prays may be enquired of by the Country &c - Bates & Allen p. 9 -

and afterwards to wit; at the said March term of the said Circuit Court in the year aforesaid on the tenth day of May in the year Eighteen hundred and thirty two the following proceedings were had in said cause to wit; -

James Soper,

Arthur S. Magenist } On motion of the defendant by his attorney it is ordered that the plaintiff do furnish a bill of particulars in this case. - and the said

cause was continued from term to term until the March term of the said Circuit Court in the year Eighteen hundred and thirty three at which said term on the first day of May in the year aforesaid the following proceedings were had in said cause to wit; -

James Soper

Arthur S. Magenist } Now at this day come the parties aforesaid by their respective attorneys aforesaid and neither of the parties requiring a Jury all and singular the promises are by them submitted to the court which being seen and heard and by the court here fully understood the court do find as to the first issue within joined between the parties aforesaid that he the said Magenist did undertake and promise in manner and form as he the said James hath above thereof complained against him, and as to the second issue within joined between the parties aforesaid the court do find that he the said plaintiff was not nor is indebted to the said defendant in manner and form as the said defendant hath above in his said second plea alleged and the court assess the damage of the said plaintiff by him sustained by reason of the nonperformance of the promises and undertakings in his declaration mentioned to the sum of One Hundred dollars therefore it is considered that the said James Soper recover against the said Arthur S. Magenist his damages aforesaid in form aforesaid by the court assessed together with his costs and charges by him about his suit in this behalf expended and that he have thereof Execution. - and afterwards to wit; at the same term of the said Circuit Court on the tenth day of May in the year aforesaid the said defendant "filed his bill of Exceptions" in said cause - - - and afterwards to wit; at the same term of the said Circuit Court on the Eleventh day of April in the year aforesaid the following further proceedings were had therein in the said cause to wit; James Soper

Arthur S. Magenist } The defendant moves the Court to grant him a new trial in this case and the Court not being advised what Judgment to render on said motion, take time to consider and do order the Execution of the Judgment be suspended until the said motion be disposed of. - - - and the said cause was continued until the July term of the said Circuit Court in the year Eighteen Hundred and thirty three at which said term on the fourteenth day of August in the year aforesaid the following further proceedings were had in said cause to wit;

James Soper

Arthur S. Magenist } Now at this day come the parties aforesaid by their respective attorneys and the court now being sufficiently advised of and concerning the premises, it is considered by the Court that the Verdict and Judgment entered in this case be set aside and a new trial

order to furnish
bill of particulars

Submission to Court
and Judgment

bill of Exceptions
Filed by defendant

Motion for New Trial
& held under advisement

is granted." — and the said cause was continued until the November term of the said Circuit Court in the year last aforesaid at which said term on the Twenty third day of December in the year Eighteen Hundred and thirty three the following proceedings were had in the case aforesaid to wit;

James Soper }
Arthur L Magen¹⁰is } Now at this day come the parties aforesaid by their respective attorneys and neither of the parties requiring a Jury all and singular the premises are by them submitted to the Court and the Court refers the same to William Renshaw, Charles Billon and Hiram Church three indifferent and competent persons who being duly sworn well and truly to try the issues within joined between the parties aforesaid on their oath aforesaid do say as to the first issue within joined between the parties aforesaid that he the said Magen¹⁰is did undertake and promise in manner and form as the said James hath above thereof complained against him and as to the second issue within joined they do say that he the said plaintiff was not nor is indebted to the said defendant in manner and form as the said defendant hath above in his said second plea alleged and they report to the Court that the said plaintiff hath sustained damage by reason of the nonperformance of the promises and undertakings in his declaration mentioned to the sum of Seventy five dollars — thereupon the said defendant moves the Court to grant him a new trial in this case and files his reasons therefor. — — —

and afterwards to wit at the said November term of the said Circuit Court in the year aforesaid on the Eighteenth day of January in the year Eighteen hundred and thirty four the following further proceedings were had in said cause, to wit;

James Soper }
Arthur L Magen¹⁰is } Now at this day come again the parties aforesaid by their respective attorneys and thereupon upon mature deliberation it is considered by the Court that the Verdict entered in this case be set aside and that a new trial be granted" — and the said cause was further continued until the March Term of the said Circuit Court in the year Eighteen Hundred and thirty four at which said term on the twenty sixth day of March in the year aforesaid the following further proceedings were had in said cause to wit;

James Soper }
Arthur L Magen¹⁰is } The Judge of this Court being of kin to the defendant in this action it is considered by the Court that the Venue be changed to the County of Saint Charles in the second Judicial Circuit of this State and that the Clerk of this Court do certify and transmit a full transcript of the Record and proceedings in this case together with all papers appertaining to and filed in the cause to the Clerk of the said Circuit Court for the County of Saint Charles at the next term thereof."

State of Missouri }
County of Saint Louis } & I Archibald Famble Clerk of the Circuit Court for the County of Saint Louis do certify that the above and foregoing is a full transcript of the Record and proceedings in the above case of James Soper

Verdict set aside }
& new trial granted }

against Arthur L. Magenid as the same now remains in my office
 In testimony whereof I have hereunto set
 my hand and affixed the seal of the said
 Circuit Court at Office in the City of St. Louis
 and County aforesaid this ~~eighteenth~~ day
 of April One thousand Eight Hundred
 and thirty four

Archibald Gamble
 Clerk

Fee \$100 in the case of James Soper
 against Arthur L. Magenid

Sheriff John R. Walker St. Louis	\$ - 1 " 00
Clerk Archibald Gamble St. Louis	7 " 47½
Do - Transcript	2 " 15
Certificate & Seal	0 " 50
Tag	0 " 02½
Forwarding papers	2 " 00
	<u>13 " 75</u>

III 38 ①

James Loper

103

Arthur S Magenis

Transcript of Proceedings on Change of Name
to the County of Saint Charles



Deleke Gantner \$7.44 1/2
Hanscock 3.24 1/2
Hansmuthy John 2.00

\$12.75

Henrich Brothers 1.00
Smith & Co. 1.62 1/2

\$15.37 1/2

Filed 5th May 1836

W. P.

James Cooper Esq: } In the Circuit Court, for the County
William A. Rogers Esq: } of Jefferson, State of Missouri.

TO the above named defendant

YOU ARE HEREBY NOTIFIED, That Depositions of Witnesses to be read in evidence in the above cause, on the part of the Plaintiff, will be taken at the office of Daniel Strong a justice of the peace in the County of Johnson and State of Missouri, on the eighth day of July in said, between the hours of 8 o'clock in the forenoon, and 6 o'clock in the afternoon.

Johnson
4. July 1835.

James Cooper Esq: & Co
attys
Jefferson

Served this notice on Arthur L. Maynis
by delivering to him a true copy of the
same on the 4th day of July 1835 in the
county of St Louis James Bratherton Shff
Service 50 cts By M Bratherton D Shff

Deposition of a witness produced sworn and examined on this eighth day of July eighteen hundred and thirty five, between the hours of eight o'clock in the forenoon and six o'clock in the afternoon of that day, in pursuance of the notice hereto annexed, at the Office of Daniel Hough in the County of Saint Louis, and ~~State of Mississippi~~ before me Daniel Hough a justice of the peace within and for the County aforesaid, in a certain cause now depending in the Circuit Court for the County of Jefferson in said State between James Loper Plaintiff and Arthur L. Magenis Defendant on the Part of the Plaintiff —

Charles S Hempstead being produced sworn and examined on the Part of the Plaintiff deposed and said that previous to the year eighteen hundred twenty seven witness executed a promissory note to James Loper for Loan Office paper, the amount not recollected — Some time afterwards Mr Magenis called on witness for the payment of said note, stating that it had been transferred to him by said Loper — witness remarked to Mr Magenis that there were unsettled accounts between Loper and himself & that witness expected the note would be settled in that way — Mr Magenis observed that he could not allow any offsets against Loper — witness applied to Loper to take back the note from Mr Magenis and settle it in the mutual dealings between Loper & himself — Loper declined doing so —

stating that it (the note) was then beyond his control - that he Loper had employed Mr Magenis & Ed: Bates, to ~~defend the judgment~~ ^{defend} the Loan Office suit against him - and that the note given by Witnep to Loper had been handed over to his Counsel (Magenis) out of which note they were to have their fees - Witnep thinks Loper said that there were other notes for Loan Office paper which he had also placed in the hands of his Counsel or one of them to be collected & their fees to be deducted out of them - Witnep further says that finding he could make no settlement of the note with Loper & Mr Magenis insisting upon its payment, he paid Magenis on said note about the 29th May 1827 the sum of Two hundred and seven dollars by the assignment of a judgment in the name of J. J. Purdy against Elias Rector, Exr and others - & that if Magenis received any thing more on said judgment it will appear by reference to his receipt on said judgment to the Sheriff of St Louis County -

Cross Examined by Defendant

Witnep understood from Loper that he had divested himself of the property in the note which was the reason why it was beyond his control - when he was applied to Loper to take back the note from Magenis as before stated -

Sworn to & Subscribed

Chas J Hempstead

before me this 8th day
of July 1835 - D. Hough J.P.

State of Missouri }
County, Saint Louis } I Daniel Hough a justice
of the Peace within and for the County aforesaid
do hereby Certify that Charles S. Hempstead the
foregoing deponent was by me sworn to testify
the whole truth of his knowledge touching the
matter in controversy aforesaid; that he was
examined and his examination reduced to
writing, and by him subscribed in my
presence on the day between the hours and
at the place in that behalf first aforesaid

D. Hough Justice of the Peace
County Saint Louis

Justice fee \$1.25
paid by P.H.

1835

James L. L. L.

Arthur L. L. L.

depositions

State of Missouri

County of St Charles

1886

Be it remembered that on the sixth

day of May in the year of our Lord eighteen hundred and

thirty four was filed in the office of the clerk

and for the said county of St Charles the accom-

ents of the record and proceedings in the case

against Arthur L. Magenis, commenced in

court of St Louis county, and thence removed

change of venue to the said county of St Cha-

rlotte and at the May Term of our circuit

year aforesaid, on the first day thereof, the fol-

lowing were had to wit:

James Loper

vs }

Arthur L. Magenis

235

235

Clerk Christy for costs of suit \$2.70

Transcript

0.30

certificate & seal

.50

.62 1/2

Tax

5.00

Forwarding 50 miles

9.12 1/2

continuance
May Term 1834

"James Loper
vs
Arthur L. Magenis" continued.

And afterwards the said cause, for reason of the failure of our said court to do, made continuance from time to time, according to the statute in such cases provided, untill the June Term of said court for the year Eighteen hundred and thirty five, when, on the second day of said Term, the following order was made to wit:

venue changed
June Term 1835

"Arthur L. Magenis" } The Judge of this court being

"the Defendant in this action, it is ordered by the court that the venue be changed to the county of Jefferson in the seventh judicial circuit of this state - and that the clerk do certify and transmit a full transcript of the record and proceedings in this cause, together with all papers and exhibits thereto, and

filed in the name, to the clerk of the circuit court for the said county of Jefferson, at the next term thereof."

State of Missouri

County of St. Charles } ss. William Christy, Jr. clerk of }
H. or

do hereby certify and for the county aforesaid, certify the above and foregoing to be a full and perfect transcript of the record and proceedings in the case of James Loper against Arthur L. Magenis, as the same now remain of record in my office - and that the accompanying papers are all that in any manner appertain to said case.



Given under my hand and the seal of said Court at office in the town of St. Charles this 27th day of October A.D. 1835.

William Christy Jr.