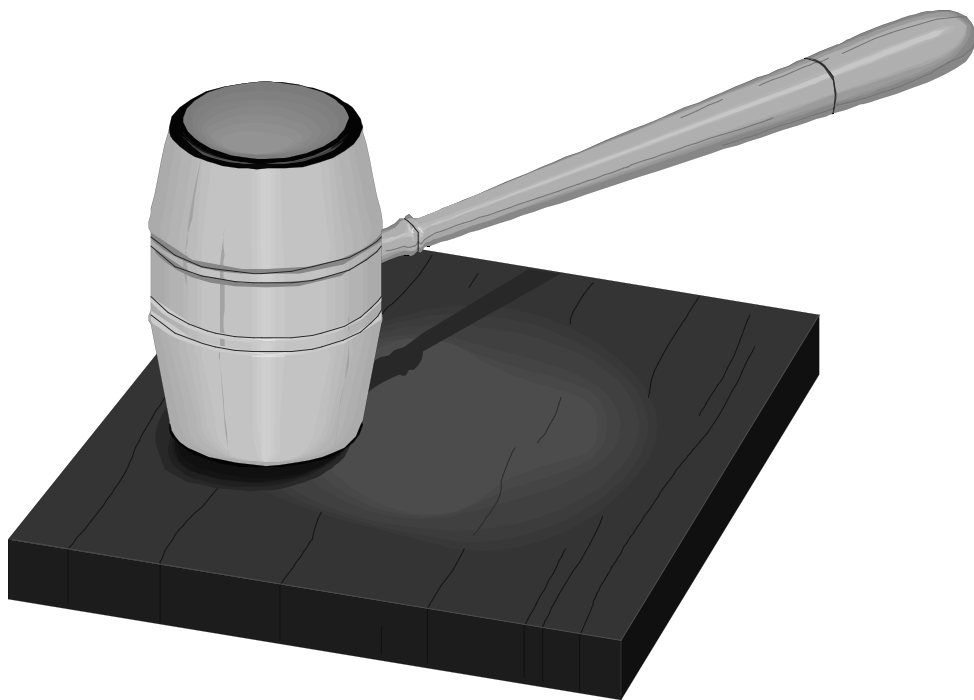


Circuit Court

Motion Docket

1838-1841

Lauderdale County, Mississippi



**Abstracted By
James T. Dawson**

**40
LCDA&H, INC.**

**LCDA&H, INC.
Meridian, MS**

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**LAUDERDALE COUNTY, MISSISSIPPI MOTION DOCKET -- CIRCUIT COURT
1838-1841**

This is from the oldest log record in Lauderdale County, MS. The cases referred to in this abstract are in the Archives among more than 12,000 court cases records. These records go back to 1835 and will be filed in acid-free file folders for safekeeping. Information abstracted from these records will be placed in computer. As one reads the abstract, which is in alphabetical form, it will reveal that many of the same law practices are still in effect today.

In many cases the attorneys are named - thus giving a bird's eye view of the legal representatives in the County during this early period as well as the names of early settlers.

The abstract also reflects suits filed by an Indian Chief OKLAHOMA. Legend has it that the State of Oklahoma is named after this Indian Chief.

This abstract deals with court cases mostly, but has reference to some criminal cases such as assault and battery, exhibiting deadly weapons, perjury, and striking an attorney from the roll of attorneys.

It is interesting and could be a tool to locate some ancestors who were brought to trial and who perhaps cannot be found elsewhere.

This record is not on microfilm and the original record is too fragile for public viewing and use.

William vs. Alfred Bates

Motion by defendant's attorney for a new trial in this case for the following reasons. The verdict was contrary to law and the evidence before the jury. The damages were excessive. Wood defendant's attorney. Overruled. Nov. 1840

Abston, Nathaniel (admin.) vs. William White

Motion by R. McElroy as bearer to quash for defects apparent (in) the proceedings of this case. May 1839.

Adair, Benjamin F. (to use) vs. James W. Thompson

Motion by defendant's attorney to set aside the judgment by default in said case because: 1. The defendant's attorney upon the said clerk of said court on the first day of the term, and was told by said clerk that the papers in said case were not in file. 2. The judgment in said case was taken when the demurrer was in file. Overruled. Heyfron & Swift, atty. for defendant. May 1838.

Adair, Ervin R. vs. William & Dow

The defendants in this case by their attorney move the court that said plaintiff be required to give security for costs as per the affidavit filed. Entered first day of term. Wood for motion. May 1841.

Adair, Zadock vs. J.R. Leath & Co.

Motion to quash. the attachment, affidavit and bond for defects apparent thereon. Doty. Sustained. Nov. 1839.

Adair, Zadock vs. John R. Leath - attachment

Motion by plaintiff's attorney for leave for the sheriff to amend his return on the attachment in this cause. R. McElroy attorney for plaintiff. Nov. 1839.

Agnew, Sameul vs. John L. Harrell

Motion in this case for the sheriff to be allowed to come in and amend his return on the writ. Hussey for the motion. Second motion. Motion to quash the writ and declaration in this cause because the same purports to be issued against a person who was died (dead) and not in life at the time of issuance and filing of the same. Hussey for motion. Nov. 1840.

Allen, Henry N. vs. Samuel Dale

Motion by defendant's attorney for security for cost the plaintiff being a non-resident of this state - 5 days. Overruled. R. McElroy atty. for defendant. May 1840.

Alston, Nathan, admin. estate of Nathan Moore vs. William White

Motion to quash attachment in this case for the following reasons: 1. There is no declaration filed. 2. The affidavit and bond is insufficient because that not in conformity to the statute. H. Calhoun atty. for defendant. May 1839.

Alston (Admin. of estate of Arthur Moore) vs. White - attachment.

Same motion as before by Walker for motion. Overruled. Nov. 1839.

Anderson, James M. & William J. Wright vs. Samuel H. Cochran (sheriff)

The defendant moves the court to quash the writ - it not appearing to be directed to or executed by any legal officer known to the law - for that purpose and that said writ was issued on Sunday. P. Doty defendant's attorney. Six day overruled. Second motion. In this case the defendant moves the court to quash the writ because it is not either directed to or executed by any legal officer known to the law for that purpose and that said writ was issued on Sunday. Peter Doty, defendant's atty. 6 day overruled. May 1840.

Arrington & Miller vs. John Culbraith, Nevin Culbraith & John R. Brown

Defendants moved the court to set aside the judgment by default in said case because: 1. The defendants' attorney called upon the clerk of this court on the first day of this term and he was told by said clerk that the papers in said case were not in file. 2. The judgment in said case was taken when the demurrer was in file. Overruled. Heyfron & Swift, atty. for defendant. May 1838.

Austin, H.H. & Duncan Calhoun vs. David Russell

No information. Nov. 1839.

Bank of, the State of Alabama, the President & Directors, vs. William Bennett, David White and John Pierce.

Motion to strike out the plea in abatement because it is not sworn to and is a frivolous plea. P. Doty, atty. Sustained. Nov. 1839.

Bankston, Levie vs. Joseph Scison.

Motion in this case to set aside the verdict judgment in case because the defendant was surprised on the trial by the evidence of Mooney and Nix and for other reasons disclosed in defendant's affidavit filed. Doty & Marshall for motion. Sustained. May 1841.

Bankston, Levi vs. Joseph Scisom

Motion by plaintiff's attorney to reject defendant's plea and to quash bail bond for the following reasons. First note taken by any officer authorized to take the same. Second on the ground and that at the date of said bond imprisonment (imprison) for debt was abolished by law and no bail bond could legally be taken. R. McElroy, atty. for plaintiff. Overruled. May 1841.

Beers & Prevost vs. James M. Davis

Motion to quash by defendant attorney for defects apparent in the writ. Overruled. R.M. McElroy, atty. Second motion: Defendants' attorney made motion to quash writ for defects thereupon. Overruled. R. McElroy, atty. Third motion: Motion by defendants' attorney to quash writ for defects thereupon. Overruled. R. McElroy, atty. May 1838.

Blackburn, use of R. McElroy vs. John Trussell et al.

Motion in this case to quash the execution because it there is no judgment upon which to found it and to quash the bond for defects apparent therein and because it was illegally taken. Overruled. Marshall Moore & May 1841.

Bostic, Charles vs. Alfred Waites & R.B. Tutt

Motion that the plea of abatement to the said writ in the said cause be struck out and dismissed because said plea is frivolous, trivial and uncertain. Sustained. Shields L. Hussey for motion. May 1939.

Bright & Ladyard vs. John Culbraith and Nevin Culbraith.

Motion for security for costs, the defendant having filed his affidavit and given notice at the last term of the court that the same would be required of the plaintiffs, they being non-residents of this state. Peter Doty, atty for defendant. Nov. 1840.

Brocen (Brocken), C.J. vs. William O. Duncan

Motion to quash. the bail bond because the same is given as one writ adatisfacendum when the writ is a writ of copias aduspondendum. 5/2/1939. Marshall for defendant. May 1839.

Brown, Chrissence vs. John Hambuck et al

Motion to dissolve the injunction and quash the in this case. 1. Because this court has no jurisdiction in the premises. 2. Because the judgment which is informed is of the circuit court of Kemper County, Miss. 5 day granted. May 1840.

Brown, Eppes R. vs. Amos W. Gary

Motion to quash writ for defects apparent. Heyfron & Swift, atty. May 1839.

Brown, Epps R. vs. Hugh McLaurin

Motion by defendant to have satisfaction enter on the execution issued by the justice, posted for all but Peter Doty, defendant's attorney, fifteen dollars principal. Nov. 1840

Brown, Epps R. vs. Swimon Deen

Motion in arrest of judgment because the jury that tried the issue therein found a verdict for that which. was not the issue. Heyfron for motion. Nov. 1839.

Brown, Epps R. vs. Tutt Roberts and others

Motion to strike out all the pleas except the general issue - they being frivolous and unnecessary. Peter Doty, plaintiff's atty. Nov. 1839.

Brown, John H. vs. Neil McLaurin

Motion by plaintiff's attorney to reject the special plea of the on the grounds that is (it) amounts to general issue. McElroy and Heyfron. Nov. 1839.

Brown, John H. vs. Neal McLaurin

Motion by plaintiff's attorney reject all the pleas of the defendant herein pleaded except the general plea, the same being frivolous, defective and inconsistent with each other. McElroy & Heyfron atty for plaintiff. May 1840

Brown, John H. vs. Neil McLaurin

Motion in this case by the plaintiff's attorney to set aside the verdict in said case and grant a new trial therein for the following causes to wit: 1. Because the written evidence read to the jury had no relevancy to the issue. 2. Because said verdict was contrary to evidence in this that it appeared clearly from the evidence that plaintiff sustained damages. McElroy & Swift for motion. 6 day overruled. May 1840.

Brown, Martha R. vs. John S. Harrell

Motion by defendant for security for costs. 60 day rule. Peter Doty, atty. May 1839.

Brown, Martha R. vs. John S. Harrell

Motion for change of venue by defendant for reasons set forth. in his petition. 5 day overruled. Peter Doty defendant's attorney. May 1840.

Brown, Mary R. vs. John S. Hurrell (Harrell)

The defendant in this case moves the court for a new trial because the verdict of the jury was not in accordance with the testimony there being no evidence of any damage. Peter Doty, atty. Nov. 1840.

Brown, Richard vs. John S. Harrell

Motion by defendant for security for costs. 60 day rule. Peter Doty defendant atty.

Brown, Richard B. vs. John S. Harrell

Motion by defendant for a change of venue for reasons set forth. in his petition. 5 day overruled. Peter Doty, defendant's atty. May 1840

Brownrigg & Barbusee vs. Boykin and Boykin

The plaintiff moves the court for an attachment to compel the sheriff to make his return. Peter Doty, atty. May 1838.

Brownrigg & Tartt vs. M.D. Cains

In chancery, Bill of Injunction the plaintiff by attorney moves the court to dismiss the bill for want of equity on hearing bill's answer which denies all the material allegations on the bill and to dissolve the injunction. Peter Doty, plaintiff atty. May 1839.

Brownrigg & Tart vs. Joseph Heyfron

Motion by defendant in said case for a nonspross because plaintiff has refused or neglected to join in defendant's demmur which. said demmur was filed at the last term of court. Joseph Hyfron. Overruled. Nov. 1839.

Brownrigg & Tart vs. Joseph Heyfron

Motion by defendant for a judgment of non pross because plaintiff has discontinued his action by praying judgment for damages in his joinder to defendant's demur to plaintiff repliacion. Heyfron for motion. Nov. 1839.

Brownrigg & Tartt vs. M.D. Cains

The plaintiff in this case moves the court to set aside this non suit, for leave to file a bill for discovery. Doty for motion. May 1841.

Cade, John M. vs. Peter Ussery

Motion in this case to transfer the same to the county of Newton because the defendant is a resident of that county and the plaintiff is a citizen of Newton county where the contract was made. Entered Monday 20th. M. Marshall. Overruled. May 1839.

Cain, M.D. vs. Mathew Duncan

Motion to quash bail bond in this case and to discharge bail because the same was required and taken contrary to law. Marshall for motion. May 1839.

Cains, M.D. vs. Brownrigg and Tartt and others

The defendants moved the court to dismiss the bill for want of equity. Peter Doty, Atty for defendants. May 1838.

Cains, M.D. vs. Rowel Boykins

In this case motion to squash. the attachment on the ground that the affidavit bond and attachment are insufficient. Peter Doty, atty. Second motion: Motion to set aside attachment for want of a sufficient affidavit and bond, this case not having been put on the docket till late on Tuesday, the 2nd day of the term, and the papers reportedly called for and not forwarded. Overruled. Peter Doty, atty. May 1838.

Cain, Mucindine (M.D. Cain) vs. Mathew Duncan

Motion by defendant's attorney for a new trial in said case for the following causes to wit: Because the verdict in said case was

clearly contrary to law and evidence. Sustained. Heyfron & Swift, atty. May 1838.

Cains vs. M. & J.T. Duncan

This motion to quash. the bail bond in this case because the same purports to be a bond upon a writ adsatisfacendum instead of a writ aduspondendum. 5/20/1839. Marshall for motion. May 1839.

Cains, M.D. vs. William Mann (trespass)

Motion by plaintiff's attorney for leave to amend the declaration in this cause. R. McElroy, atty. for plaintiff. May 1839.

Caldwell, John D. vs. Thomas Lewis

Motion for security for costs - the plaintiff being a non-resident. Peter Doty, defendant's atty. May 1839.

Caldwell, John D. (admin.) vs. Thomas Lewis

Motion by plaintiff's attorney to reject the plea of the statute of limitations as bail. R. McElroy, plaintiff's atty Continued. May 1839.

Cameron, Daniel vs. Serno Mason

In this case the defendant by attorney moves the court to compel the plaintiff who is a non-resident of this state to give security for the costs that may be awarded to the defendant and also for the fees that are and that may become due to the officers of this court. Entered on first day of term by Shields S. Hussy, Atty. for motion. May 1841.

Campbell, D.A. vs. Obadiah Hulet

Motion to quash. the attachment for recent (reason) of insufficient affidavit and bond and also on the ground that another

maker of the note ought to have been sued jointly with defendant. Sustained. Peter Doty, atty. Second motion: Motion to quash. the attachment for want of a sufficient affidavit and bond and that defendant should have been sued jointly with another. Overruled. Peter Doty, atty. May 1839.

Campbell, Duncan A. vs. David Hall and Allen Hodges.

Motion by the plaintiff's attorney for have (leave) to amend the pleadings in this cause. M.M. Mann, atty. May 1838.

Caraway & Goodson vs. Samuel H. Cochran.

The defendant moves the court to quash the writ because the same is neither directed to or executed by any officer known to the law for that purpose. 6 day overruled. P. Doty, defendant's atty. May 1840.

Caraway & Goodson vs. Southy Fisher

Motion by plaintiff's counsel against the sheff (sheriff). It appearing to this court that Samuel H. Cockran (Cochran) sheriff has collected on the above stated fi fa the sum of sixty one dollars and thirty seven cents by his return upon the said fi fa and he having refued to pay the same over to plaintiff's attorney, upon the same being demanded of him - wherefore it is ordered by the court that the plaintiff -- of the said Samuel H. Cochran, sheriff as aforesaid the-- sum of sixty one dollars and thirty seven cents together with. twenty five percent thereon for their damages. Continued. Notice admitted. S.M. Wilson, plaintiff's atty. May 1839.

Caraway & Goodson vs. Southy Fisher

Motion by R. McElroy as amicus curia to quash fi fa on the grounds that it is not supported by the records of the circuit court of Lauderdale county as it purports to be. R. McElroy. May 1839.

Carmichael, Hugh, S.W. Hanna and Daniel McPhail vs. Benjamin Holland

Motion by plaintiff's attorney to quash the fi fa in this case on the ground that it is not found any judgment of this court as it purports to be. Sustained. R. McElroy, plaintiff's atty. May 1839.

Carr, William vs. Merideth Price

Motion by defendant for a new trial in this case on the ground that defendant was prevented by unavoidable circumstances from making his defense on the merits for that he was to be surprise on the trial. Overruled. Marshall for motion. May 1841.

Casey, Dennis & Co., vs. Thomas H. Davis and others

Motion to set aside the judgment by default because the summons rendered upon a declaration containing two separate and distinct counts without having first entered a nolleprosepies upon either. Overruled. M.B. & Boyd for defendants. May 1838.

Clinton, Joseph vs. Benjamin Ezell - attachment

Motion to quash the levy in this case because the same was not made by a legal officer as appears of the court. McCaskill for motion. Nov. 1840.

Coats, James R. vs. Lewis Miller (in chancery)

Motion in this case by plaintiff attorney to reject the answer of the defendant because it does not, answer any material allegations in plaintiff bill and for a decree. Calhoun for motion. May 1841.

Cochran, S., sheriff - Expartie

Motion to show cause why all the costs collected by him belonging to Ish.am Pace the former sheriff should not be paid over to his order or attorney in fact. Overruled. Expartie - the same. Motion to show cause why the money collected by him on account of an execution now informed and in the circuit court of Kemper county - of Wilkinson and Gary vs. Elias Williams should not be paid back to informant. Motion overruled. May 1839.

Cochran, S.H., use of Thomas Davis, Jr., vs. James McNeill and William Stanton.

Motion to strike out the plea in abatement because the same is frivolous. Peter Doty plaintiff's defendant. 6 day overruled. May 1840.

Cole, John H., use of Wiley Mosely vs. Ketteral & others

Motion by plaintiff to strike out the two last pleas of defendant plea did at this term of court for the following causes. 1. Because one of them amounts to a plea of set off. 2. Because the plea of payment has already been filed. 3. Because it does not proress to be between the party to the action. Causes in second plea. 1. Because said plea is double. 2. Said plea is argumentative. 3. Because said plea discloses several grounds of defense and no issue can be formed on the same. Because said pleas are totally defective. Faulkner, McDugal and Oppelt, defendant's attorneys. May 1841.

Cole, John H. vs. Kitman et al

Motion to strike out the second and third pleas of defendant in this cause for following reasons. 1. Because said first plea insufficient in over to bar plaintiff action. 2. Because the third plea is double alleged payment and found in one plea. 3. Both. pleas are informal and Sustained to strike outset off. May 1841.

Cole, John H. vs. Kittenal et al

Motion to strike out defendant's plea of tender for the following reasons. 1. Because said plea is pleaded after a plea of non-assumpsit filed. 2. Because the plea pleaded after a plea of set off pleaded and filed. 3. Because the plea is pleaded and filed after the plea of payment was pleaded and filed. McDugal, Falconer & Oppelt. May 1841.

Cole, John H. use of Wiley Mosely vs. Nathaniel Kitrell and Thomas Hightower.

Motion in this case to change the venue for the causes shown and filed with the papers in the case. Falconer, McDugall & Allen for motion. May 1841.

Cole, John H., use of Elijah Gibson vs. Joel Williams and Bruner

Motion by defendant that the plaintiff be compelled to give security for cost in this case in 60 days as the plaintiff is not a citizen of the state of Mississippi - this 29th. May 1841. William B. Trotter, plaintiff. Huss atty. for defendant. 60 day rule. May 1841.

Cole, John H., use of Elijah. Gibson vs. Joel Williams et al

Motion by plaintiff attorney to set aside the verdict of the jury in this case for the following reasons. 1. The verdict of the jury is clearly against law and evidence because it was not proved that the note given for Madison Money (Mooney?). 2. Because wherever his proof of total failure of consideration for this reason. Oppelt, plaintiff atty. Sustained. May 1841.

Cole, John H. vs. William Roberts

2 cases #59 & #60. Motion by defendant's attorney for security for cost, the plaintiff being a non-resident of this state. R. McElroy, atty for defendant. May 1840.

Crews, Thomas R., Pres. vs. Martin, Craen (Crane), Wood and Hamrick

Motion to dismiss the case because no declaration has been filed and to dismiss as to Hamrick because there has been no legal service upon him. Wood for motion. Alias writ issued for Hamrick. May 1841.

Crews, Thomas R., President (Police Board) vs. Daniel N. Calhoun & others.

Motion to quash the writ in this case and set aside the service and return of same because it was made by no one legally authorized. Sustained. Second motion. Motion to quash the writ in this case and to set aside the service and return of the same because said service and return were made by no person legally authorized. Sustained. This motion vs. Hugh. and Duncan Calhoun. May 1841.

Curry, John vs. Rachael Brashears and Willis Merritt

Motion by defendant attorney for security for costs he having filed his affidavit that the plaintiff is a non-resident. R. McElroy for Merritt. Nov. 1840.

Curry, John vs. Willis Merritt

Motion by defendant's attorney for a new trial on the ground that the verdict was not authorized by the proof. R. McElroy atty for motion. Overruled. May 1841.

Davis, Thomas H. vs. Moses Mathews

Motion to set aside the judgment by default taken on the fourth day of this term because the said judgment was taken over and without regard to a motion to quash. the writ in this case which was error. Hussey for motion. May 1840.

Davis, Thomas H. vs. Moses Mathews - appearance circuit court

Motion by defendant's attorney to dismiss this case and strike the same from the docket at the costs of the plaintiff and that the said defendant be permitted to go without delay or further impediment because the capias and respondendum to take the said defendant was issued, executed and returned with. the plaintiff afore-said first or any time since having made and delivered to the clerk of said court, a bond with. good and sufficient surety or securities to the satisfaction of the clerk in double the amount claimed on judgment rendered as the case may be, payable to the said defendant, conditioned for the payment of all damages which. he may sustain in consequence of issuing such. writ, in case it shall appear that the same was issued without good cause as the statute of 1939 requires. 5 day bail - discharged. Thomas L. Hussey for motion. Second motion. Motion to quash. the writ in this case because it issued without the plaintiff having first given bond as the statute requires. Third Motion. Motion to quash. bail bond given by defendant in this cause because the bond was not taken according to the command of the writ, in this, that the sheriff is required to hold the defendant to bail in the sum of four hundred and forty five dollars and twenty one cents, when indeed the sum named in the condition of said bond as being the sum in which. the sheriff was required to hold the defendant to bail in \$444.21, there being a substantial variance between the sum required in the writ and the sum said to be required in the bond. And because the said bail bond was taken by the sheriff when no bond has been delivered to the clerk by the plaintiff as the statute of 1839 requires. 5 day bail. Discharged. May 1840.

Deen, William and Co. vs. Amos W. Gary

In this case the plaintiff excepts to bail and moves the court to make the sheriff special bail. Sustained. Peter Doty, Atty. May 1838.

Dees, W.J.H., vs. Lucy Trahern

In this case the plaintiff moves the court for an attachment against the sheriff to compel him to make his return. Overruled. Exception taken. Peter Doty, Atty. May 1838.

Denn, Joseph exdem John McInnis vs. John Den

Motion for rule on tenant in possession to appear and plead to issue or that judgment will be entered by default for the plaintiff against the now defendant John Den. Peter Doty, plaintiff's atty. May 1840.

Denn, Joseph. exdem John McKinnis (McInnis vs. John Feen)

For a certain tract of land lying in said county of Lauderdale be known and described as the west half of the northwest quarter of section number 4 of township number 5 and of range number 17 east containing 78.25 acres.

It is ordered by the consent of Peter Doty, atty. for the plaintiff and attorney for _____ who claims title to the tract of land in question that the said shall immediately appear by his said attorney who shall receive a declaration and plead the general issue thereto this term and that at the trial to be had thereon the said _____ appear in his own proper person or by his counsel or attorney and confess cease entry and ouster. May 1840.

Dickerson, Edward P. vs. Edward Rainey.

Motion in arrest of judgment in said case for the following causes to wit: Because said writ varies from the declaration in a material part. Overruled. Heyfron & Swift, Atty. May 1838.

Dickinson, Edward P. vs. Edmond Rainey

Motion by plaintiff's counsel to set aside the plea in abatement in same case and enter up judgment in favor of plaintiff. Sustained. James McDugall, atty. May 1838.

Doe, John, exdem John Spinks, vs. Cornelius Minor

Motion by plaintiff's attorney to amend the consent rule in this case by striking thereupon and also from the plea filed, the name of William Wooten, who hath alleged that he claimed jointly with said Minor and also came in and confessed cease entry and ouster when in fact such confession as to him was untrue - as he said Wooten was not nor is not in possession of any part of the land for which ejectment is brought against said Minor. Hussey for motion. May 1840.

Doe, John exdem John Spinks vs. William Wooten

Motion brought by plaintiff's attorney to amend the consent rule entered into this cause by striking therefrom and also from the plea the name of Cornelius Minor, for same causes as last motion. Shields L. Hussey for motion. May 1840.

Doo (Dow?), John ex-dem William J. Ledyard vs. Richard Roe

Circuit court of Lauderdale County, Miss. Ejectment. In this case the defendant by attorney moves the court to dismiss the cause for want of jurisdiction in this because the court has not jurisdiction of the subject matter of this cause, it being for the possession of land belonging to the government of the United States of America and because the United States Court for the district of district court of the United States for the state of Mississippi has jurisdiction of the subject matter of this cause. May 1841.

Duncan, William V. vs. M.D. Cain

Motion by Cain's attorney to quash on the following grounds: 1. There is only petition to bring up two cases. 2. There is only one bond and one writ of centroviri to bring up two cases. R. McElroy, atty. Sustained. May 1839.

Earl, Joseph B. vs. Jackson Juyan (deferred at the last term of court)

Motion to amend clerical error in the entry of judgment the same being against the goods and chattels of the administrator when it should be against the goods and chattels of his intestate (estate). Peter Doty, plaintiff atty. Sustained. Nov. 1839.

Earle, Joseph. R. vs. David W. Wall

In this case the plaintiff moves the court for an attachment to compel the sheriff to make his return. The plaintiff also expects to the bail -- moves that the sheriff be made special bail. Overruled. Peter Doty atty. May 1838.

Eatvin, Winthrop vs. Paul W. Harper & Co.

Motion by defendant attorney to set aside the joinder in the demur in said case because the same is not identical with. the proceeding record - the names of the parties in said joinder not being the same as in the demur. Heyfron & Swift, atty. May 1839.

Edgar, M & B & W vs. Mann, Castles, Jusan, Calhoun & Dale

Motion by defendant attorney for security for costs affidavit being filed that plaintiffs are non-residents. R. McElroy, atty. Nov. 1840.

Edgar, Mathew B. and William Edgar vs. William Mann, James Castles, Jackson Juzan, Duncan Calhoun, Samuel Dale and the Miss. Ala. RR. Co.

Motion in this case by the attorney of said Castles, Calhoun and Dale to quash the writ in said case for the following reasons: 1. Because there is a defendant on the declaration in said case not mentioned in said writ. 2. Because there is a duplicate writ in said case and there is no endorsement on said first mentioned

writ that said duplicate writ issued. Joseph Heyfron, Atty. for said defendants. Motion continued. Nov. 1839.

Eubanks, Isaac vs. Joseph Lee - unlawful detainer

Motion for a new trial in this case for following reason. No other information. May 1841.

Eubanks, Isaac vs. Joseph Lee

Motion by defendant's attorney to set aside in this cause the verdict of the jury in said cause and to strike said cause from the docket of this court. 1. Because the circuit court of Lauderdale County, Ms. has not jurisdiction of the subject matter of said cause, the same being public land belonging to the United States and having belonged to the general government of the United States at the time said verdict was rendered and not subject to the disposal of any court in this state or the United States except the U.S. court for the district of Mississippi. 2. The verdict is informal and not as the statute requires. Hussey for motion. May 1841.

Eubanks, Isaac vs. Joseph Lee

Motion to dismiss this cause and discharge the supersedens because the certiorari issued without sufficient grounds and because defendant does not show eviction by a paramount title. Because defendant having acknowledged plaintiff's title, and derived benefit under it he cannot now dispute it. Because defendant cannot plead nil habuit in tenementis. Wood for motion. May 1841.

Ewing, S. & Co. vs. Nathaniel Alston and Mrs. Clay.

Motion by plaintiff attorney in this case to reject the plea of defendant herein filed on the grounds that said plea is frivolous. R. McElroy, Atty. for plaintiff. May 1839.

Ewing, S. & Co., vs. Nathaniel Alston

Motion by plaintiff's attorney to set aside the non-suit in this cause on the ground of suppose. 6 day non-suit set aside. R. McElroy, Atty. for plaintiff. May 1840.

Ezell, Benjamin vs. Lucy Trahern (adm.)

Motion to quash the attachment in this case because there is no bond or affidavit filed and because the defendant is administratrix and sued as such and the return thereon is defective and said attachment is in many respects illegal and informal. Sustained. Heyfron & Swift, Atty. Arnio Curiae. May 1838.

Ezell, Benjamin vs. William White

Motion by defendant's attorney to quash the attachment and proceedings in this cause for defects thereupon. Over ruled. This garnishment. R. McElroy, Atty. May 1838.

Falls & Houston vs. John Keeton, Nathan P. Deen and Duncan Calhoun

Motion in this case that the sheriff be required to amend his return on the writ according to the facts. Heyfron for motion. Nov. 1839.

Falls, John & Samuel T. Houston vs. John Keeton, Nathan P. Deen and Duncan Calhoun.

Motion by the said John Keeton for judgment against the sheriff of Lauderdale County for the sum of \$500, one half thereof for the use of said Keeton and the other half to the use and for the benefit of the Literary fund because said sheriff made a false return on the writ of caprias and respondendum that issued in said case in this, that he returned said writ executed on said Keeton per copy whereas in fact and in truth. the endorsement in said writ is 'wholly different' from the endorsement on the copy

handed by said sheriff to said Keeton. Joseph Heyfron, Atty. for said motion. Nov. 1839.

Falls, John & Samuel T. Houston vs. John Keeton, Nathan P. Deen and Duncan Calhoun.

Motion for judgment against the sheriff of Lauderdale County, Samuel H. Cochran, for the sum of \$500, one half thereof for the use of said plaintiff and the other half for the benefit of the Literary Fund for the following cause, to wit: That said sheriff did not serve the writ of copias respondendum that was issued in this cause on one of the defendants, to wit, John Keeton, aforesaid, in consequence of which neglect to serve the copias and resp. aforesaid, the said plaintiffs have not been able to have judgment against all the defendants in this cause, as they might otherwise have done. Shields L. Hussey for motion. Continued. Nov. 1839.

Falls, John & Samuel T. Houston vs. John Keeton, Nathan P. Deen and Duncan Calhoun.

No information. Nov. 1839.

Fisher, Sothy vs. James New

Motion by defendant attorney to dissolve the injunction and dismiss the bill in this cause for want of equity. R. McElroy, Atty. for defendant. 6 days granted (a new trial). May 1840.

Garner, John H. Theophilus Falls vs. John Davis

Defendant in attachment and John E. Davis summoned as garnishee. Motion by attorney of said defendant for plaintiff to be required to give security for costs. Affidavit filed and motion entered Monday. Shields S. Hussey. May 1841.

Garrett, Edward G. vs. Armel F. Adair

Motion to set aside the judgment by default in this case for the following reasons to wit: The case stood upon an alias writ and the judgment was rendered upon the original writ which was errors in as much. as second original was superceded by and made void by the mesne process. Marshall for the motion. Overruled. Nov. 1840.

Garrett, Edward T. vs. Susannah Garrett. Bill for divorce

Motion by to set the case for hearing on Saturday. Marshall Solicitor. Nov. 1841.

Gariett, William vs. Pleasant Henderson, Carter Henderson and William B. Warbington

Motion for a new trial because the verdict of the jury was contrary to law and the evidence before them. Because the decision of the court in ruling out the evidence for said Warbington was contrary to law. Wood for motion. Sustained. May 1841.

Gavnin & Falls vs. John E. Davis

Motion by plaintiff for a new trial on the ground that one of the jury was a brother in law to claimant and that verdict was not supported by proof. R. McElroy, attorney for plaintiff. Sustained. May 1841.

George, Thomas J. George vs. Owen Lee

Motion by plaintiff that a judgment on the 19th day of May 1839 for the sum of \$623.69 and to take from the day on which, it was rendered. Also to file the declaration and writ said case as the record on which this judgment is founded. May 1839.

George, Thas J. vs. Owen Lee

Motion to unstate a certain judgment rendered in favor of the plaintiff against the defendant on the 18th day of May 1839 - the final record on which. hearing being burned in the clerk's office since that time and to accept the declaration and writ on file in the clerk's office as the record on which this judgment is founded - they being the identical papers on which the former judgment was rendered and that the amount rendered in the former judgment was \$623.68. James McDugall, Atty. for plaintiff. Sustained - then marked through. May 1839.

Gibson, James, bearer, vs. Gabriel H. Tutt

Motion by defendant's attorney for security for cost, the plaintiff being a non-resident of this state. R. McElroy, Atty. for Tutt. May 1840.

Glover, James vs. George S. Pickle

Venditione expones returnable to this term of court. No listed motion. Nov. 1840.

Glover, James vs. George S. Pickle

Motion to quash the venditione expones in this case upon the following grounds. 1. For want of a copy of the bill of cost endorsed thereon; containing the items of cost in intelligible words and figures. 2. Because said venditione expones is not founded upon any previous levy of a fi fa returned into court as in said venditione expressed. 3. Because said venditione expones did not issue on the day it bears date but has been dated. Motion sustained. R. McElroy for motion. Nov. 1840.

Glover, James vs. George S. Pickle

Venditione expones returned to this term of the court. Motion by said Pickle through his counsel that the court now here order

satisfaction to be entered on the judgment on which. said fi fa purports to be issued because, before the said fi fa issued the said defendant had fully paid and satisfied the said judgment which the said defendant is now here ready to verify and that said fi fa be quashed because said fi fa issued on a judgment which. was in fact paid and satisfied before the issuing of said fi fa. Hussey for motion. Nov. 1840.

Grant & Harris vs. Richard M. Saul

Motion to set aside the verdict of the jury in this case because the court could not allow the plaintiff to withdraw the case from the jury and give leave to amend without leave of the opposite party. Hussey for motion. Overruled. Nov. 1840.

Grant, Green W., vs. James A. McMillan

Motion to quash the return of the deputy sheriff on the original writ in this case and to set aside and quash said writ because said writ was executed by one B.F. Parkes was not properly and legally appointed deputy sheriff, the said Parke not have given bond and not being authorized under the hand and seal of the high. sheriff of said county, S.H. Cochran. Hussey. May 1841.

Grant, G.W., use of James Snedeon? vs. James Moore

Motion by defendant attorney for security for costs in this case the plaintiff being non-resident. Affidavit of defendant filed. R. McElroy - 60 day rule. May 1841.

Gray, W.R. vs. H.G. Brittian

Motion by plaintiff counsel to strike out and reject the 2, 3, 4th pleas of defendant as inconsistent, illegal and frivolous. R. McElroy attorney for plain-tiff. May 1842.

Grice, Jonathan vs. James W. King

Motion in this case to set aside the verdict and for a new trial on the grounds that the jury found contrary to law and evidence and the express charge of the court. Overruled. Nov. 1840.

Griffin, Henry vs. John B. Collins, alias fi fa

In the term of court of \$88.88 damages and also the sum of \$18.37 1/2 costs. Motion in this case to set aside the levy of this fi fa because the same appears to have been made by ore B.F. Parke as the deputy sheriff when in fact he has not been appointed under the hand and seal of the sheriff according to the form of the statute in such cases made and provided. McCaskill & Hudspett for motion. Sustained. Nov. 1840.

Hall vs. White - Attachment

Motion by defendant's attorney to set aside the judgment in said case because it does not appear that publication made according to law in such cases made and provided. Walker for motion. Overruled. Nov. 1839.

Hall, David vs. George S. Pickle

Motion that the forthcoming bond of William J. Wright and Thomas R. Crews given by said Wright as claimant of said property be quashed. Hussey for motion. Sustained. Nov. 1840.

Hall, David vs. George S. Pickle

Fieri facias for the sum of four hundred and eighty dollars and seventy four with interest and also costs of suit returnable to this term of court. Motion to quash the above named fieri facias for the following reasons: Because the judgment on which, the said fieri facias purports to issue is irregular and void for informality and illegality and is untrue in point of fact. In the

first place there appears to be two judgments of record - one entered up at the November term 1839 against the defendant in the attachment William White and against George S. Pickle the garnishee - the other entered at the May term of this court 1840 against George S. Pickle the garnishee above - the first judgment at the November term 1839 vs. George S. Pickle the garnishee is void because the answer of the said garnishee in which it is founded is uncertain, indefinite and insufficient and is not such an answer as that an absolute judgment could be entered thereon in this that the said garnishee does not answer that he is indebted to the said William White the defendant in this attachment but on final settlement with, the said White he expects he will be indebted to the said White about \$1000 and said judgment is also void and irregular because it does not specify on its face that the amount for which, the said garnishee acknowledged himself indebted, and nor to whom and also because there is no executor in said judgment, in favor of the said defendant William White on the payment of the debt by the garnishee so that the said fi fa if founded on the judgment ought to be quashed because the said judgment is defective in the above named particulars.

The second judgment at the May term 1840 of this court purporting to be a judgment nue pro tence entered up at the May term 1840 is void for informality and illegality in several particulars. It purports to be a judgment nune pro tune which. the plaintiff has no right to enter or to have entered. It purports to be a judgment against a garnishee without reciting that the garnishee answer that he was indebted or how much. It reads as a judgment by default saying the said George S. Pickle being solemnly called comes not but wholly _____ default. It joined in damages which. is irregular, informal and therefore void. There is no executor? entered up therein in favor of said defendant upon payment by the garnishee. So the said fi fa if issued on the last judgment ought to be quashed because of defects in that judgment. The said fi fa purports to issue on a judgment which. is irregular and informal and therefor void and which is in fact no judgment. The said fi fa is in other respects informal, insufficient and void. Hussey for motion. Nov. 1840.

Hall, David & James Glover vs. George S. Pickle

The plaintiff, David Hall by attorney, moves for an application of the moving made in his case in preference to the case of Glover vs. Pickle for the following reasons: 1. On ground of having a said move delegece? then was used in the case of Glover vs. Pickle. 2. On the ground the execution in his case was first levied. 3. On the ground that the property was advertised and sold under the vindeteone expones in the case of Glover vs. Pickle. 4. That the vindeteone expones was never issued until the very moment of sale under the fi fa in the case of Hall vs. Pickle and then issued and AB dated. 5. The original fi fa upon which the vindeteone expones purports to be found did not issue until the _____ day of _____18__ long after the fi fa in the case of Hall vs. Pickle had issued. R. McElroy Atty. for Hall. Nov. 1840.

Hall, David vs. George L. Pickle.

Fi Fa returnable to this term of the court for \$488.74 with costs. Motion to quash the said fi fa for the following reasons: 1. Because there is no such judgment in this court against the said defendant as the one on which the said fi fa purports to have issued. 2. The said fi fa irregular, illegal and without authority of said and is contrary to the form of the statute. John Stub for motion. May 1840.

Hall, David vs. William White and George Pickle - garnishee

Motion by Plaintiff's attorney for a judgment}non protune? as of the last term of this court against George S.P.ickle the garnishee in this cause he having answered that he was indebted to the said White. Granted. R. McElroy, atty. for plaintiff.

Hamrick, James vs. Isaac Eubanks

Motion by plaintiff attorney to reject the defendant plea in abatement on the ground that the same is false, frivolous and

untrue and intended only for delay. R. McElroy, atty. for plaintiff. May 1839.

Harper vs. Lewis

The defendant in this case moves to quash. the writ on the grounds that teste in name of Thomas S. Sterling two months after his death. and six weeks after appointment and acceptance of the present judge of the 5th judicial district in the state of Mississippi. Jn (John) Edmonson, defendant atty. May 1839.

Harrington, Joshua vs. Edward L. Hussey

Motion by plaintiff's attorney for a new trial on the ground that the court was mistaken as to law in this charge to the jury. R. McElroy, atty. for plaintiff. Nov. 1840.

Hartfield, Asa vs. C. B. Gressett and J. H. Clayton

Motion to quash. the writ and duplicate in this case for the following causes. Said writ been testes on the third Monday of May instead of the fourth.. Said writ are made returnable the third Monday of November instead of the fourth. Wood, amicus curiae withdrawn. Nov. 1840.

Hartfield, Asa vs. Clarke Y. Gressett & J.A. Clayton

Motion in the _____ by plaintiff attorney for _____ of the court to amend the duplicate writs in this _____ because the clerical errors of the text and days of the same. Morris for plaintiff. Nov. 1840.

Hays, Daniel C. and Lovelace Mott vs. Jacob B. Gordon

In this case the defendant moves the court to dissolve the injunction and dismiss the complaintant's bill in chancery for want of equity. 5 day granted. Peter Doty, solicitor for defendant. May 1840.

Heidelberg, John C. vs. William Roberts

Motion to strike out the plea of the defendant in this case, the same being a _____ and to sign judgment as by default. Hussey for motion. Nov. 1839.

Heidleburg, John C. vs. William Roberts

Motion by defendant attorney for judgment of non-pros for want of _____ to defendants plea in abatement. R. McElroy atty. for defendant. Nov. 1839.

Heidleburg, John vs. William Roberts

The defendant presents his petition in this cause for a discovery. 6 days granted. R. McElroy, atty. for defendant. May 1840.

Henderson, Carter vs. H.M. Findley

Motion to quash the forthcoming bond in this case because it was improperly taken and to retax the bill of costs on the execution. May 1841.

Heyfron, Joseph vs. Robert B. Merrett

Motion to quash the attachment for the following reasons, to wit: There is no course of action endorsed on the attachment. The affidavit and bond and attachment are defective and insufficient. Overruled. Peter Doty, Atty. May 1839.

Heyfron, Joseph vs. Willis Merritt - garnishee

Defendant moves the court to set aside the verdict on the ground that was against the law? and evidence and for a new trial, the defendant having _____ discovered new evidence since the trial. Peter Doty defendant's atty. 6 day overruled. May 1840.

Heyfron, Joseph, use of Elias M. Sadler vs. John S. Harrell

Motion in this case by plaintiff's attorney to dismiss the certionari in this case, to quash the supersedias and to award a procedendo to the justice court below. 1. Because the certionari purports to reverse a judgment which has been satisfied. 2. Because the petition for certionari is signed by only one of the defendants and without a summons and severance of the other defendant, Anthony Lewis. 3. The certionari bond is insufficient. Shields S. Hussey for motion. May 1841.

Hodges, Robert vs. George S. Pickle

Motion by plaintiff attorney to reject the plea of the defendant herein as frivolous. R. McElroy, atty. for plaintiff. May 1839.

Holland, Benjamin vs. A.W. Hanna et alias.

Motion by defendant's counsel for security of cost, the plaintiff being a non-resident of this state. Five day security given. R. McElroy, atty. for Hanna. May 1840.

Holland, Benjamin vs. A.W. Hanna et alias

Motion by defendant's attorney to arrest the judgment on the following grounds. 1. There was judgment against part of the defendants at the November term, 1839 and cause continued as to Hanna and at this term judgment rendered against defendant Hanna. 2. Two judgments in a joint action against several defendants is illegal. 6 days overruled. R. McElroy atty. for defendant. May 1840.

Hughes, James (use of) vs. C.W. Stephenson

Motion to set aside the verdict of the jury in this case and for a new trial on the grounds that said verdict is contrary to the charge of Abe court and against law and evidence. Heyfron, Marshall and Swift for motion. Sustained. May 1839.

Humphreys, William (bearer) vs. William Roberts

Motion by the defendant for a new trial in this cause on the following grounds: 1. Because the verdict is not supported by the evidence. 2. Because the verdict is contrary to the charge of the court. R. McElroy, atty. for defendant. Overruled. Nov. 1839.

Hunter, Robert 0? vs. R.B. Tull, Melbra Alford (admin.)

Motion by defendant's attorney for security for cost, the plaintiff being a non-resident. R. McElroy, atty. for defendant. May 1840.

Ivery, Cullen vs. Anthony Smith (admin.) - attachment

Plaintiff in this cause asks for an order of publication against defendant as a non-resident. 6 day order granted. R. McElroy for plaintiff. May 1840.

Ivey, Jessey vs. William Roberts

Plaintiff moves the court to strike ou the third and fourth. pleas as frivolous there being three pleas of tender and defendant should be allowed to plead but one of the same nature. P. Doty. Nov. 1839.

Ivey, Jesse vs. William Roberts

Motion to strike out the second and third pleas because they are frivolous and unnecessary - 5 day granted and entered. P. Doty, plaintiff's atty. May 1840.

Jeffreries, Lewis P. vs. Tutt and Simmons?

Motion to set aside the plea in abatement and enter up judgment for plaintiff. Sustained. Marshall atty. May 1838.

Juzan, Eliza Ann vs. William M. Evans

Marked through. May 1838.

Keeland, William H. vs. Harrell & Brown

Motion for security for cost in this case because the plaintiff is a non-resident of this state. Affidavit filed Monday 5/24/1841. Marshall for motion. May 1841.

Keeton, James (admin), vs. James F. Paton

Motion to strike out the plea because it is frivolous and intended only for delay is apparent on the face of said plea. Peter Doty, plaintiff atty. Sustained. Nov. 1839.

Keeton, James vs. James F. Patton

Motion to set aside the judgment by default in this case because there was a prayer to hear the letters of administration filed on the first day of the term and was unnoticed by the plaintiff attorney. Shields L. Hussey for motion. Sustained. May 1839.

Keeton, James vs. Elias Williams

Motion for a judgment against the defendant for the sum of \$300 with interest on the same since the 10th. day of September 1839 - for so much. money paid by the said plaintiff as one of the securities in two certain cases wherein the defendant obtained an injunction against Willis Owens which said injunction were dissolved and judgment rendered against said defendant and his securities for \$309 in one case and for the sum of \$221.93 against the said defendant all of which. fully appears by the record of the circuit court of Lauderdale County and state of Mississippi and are now on file in the clerk's office of said court and of all which the defendant has been notified. John Stub, atty. for plaintiff. Sustained. Nov. 1839.

Keeton, Obadiah vs. RBG Harper

Plaintiff by attorney moves the court to strike out the plea in abatement - the same being frivolous. P. Doty, plaintiff attorney. Nov. 1839.

Keeton, Obadiah vs. R.B.G. Harper

Motion to strike out the plea abate on the grounds it is frivolous - there being endorsed on the writ the acknowledgement of service in the presence of the sheriff to whom it was directed. Pater Doty, plaintiff attorney. May 1839.

Kennedy, David L. vs. Epps R. Brown

Motion that demurr to the declaration in said cause be struck out and dismissed because said demurr was not filed among the papers in said cause on the first day of last November term of 1839, but was not filed till March 19, 1839; and also because the said demurr is no answer and does not apply to the declaration in said cause inasmuch. as the said demurrer names parties different from those named in the declaration - the suit being brought by David L. Kennedy against Epps R. Brown and in the said demur it is alleged that David Kennedy has brought said suit. S.L. Hussey for motion. May 1839.

Kennedy, Lewis vs. B.F. Parke

Motion to dismiss this cause for want of a declaration continued from last term of the court. Wood for action. May 1841.

Kennedy, Lewis vs. B.F. Parke et al

Motion to dismiss the case for want of a declaration. Wood for motion. Continued. Nov. 1840.

Lamb, Alexander vs. Daniel Rogers

Motion to quash. the proceedings before the justice of the peace because there is evidence upon the record returned upon which. a judgment could be rendered. Because there is no such judgment rendered according to the record as _____ a party from a second suit. Marshall for motion. Continued. May 1839.

Lamb, Alexander vs. Daniel Rogers

Motion to set aside the verdict because the same is contrary to law and evidence and for a new trial. 6 day granted. Peter Doty plaintiff's atty. May 1840.

Langdon, L & DD vs. John B. Collins

To this term of court for the sum of \$100.90 damages and the sum of \$16.372 costs. Motion to set aside the levy of this fi fa because the same appears to have been levied by one B.F. Parke as deputy sheriff of one S.H. Cochran as sheriff when in fact the said Parke has not been so appointed under the hand and seal of the sheriff as the law directs. McCaskill and Hudspeth for motion. Nov. 1840.

Langdom, L. & CC., Co., vs. John B. Collins, asst.

Motion by said defendant for security for the costs of said suit to be given by said plaintiff because they reside outside this state. Swift for motion. 5 day security given and entered. May 1849.

Layne, Wyatt vs. James Finley

Plaintiff's attorney moved the court to correct a clerical error in the entry of judgment made at the last term of this court. The judgment having been entered for \$100 too little as appears by the note on file. Sustained. Peter Doty, atty. for plaintiff. Nov. 1838.

Layne, Wyatt vs. T.S. Swift, James Murray, Duncan Calhoun and John B. Collins.

Motion to strike out the plea in abatement because the same is and is intended mainly for delay. Peter Doty, plaintiff's atty. Nov. 1838.

Layne, Wyatt vs. Theodore S. Swift

Motion to quash the service of the writ in said case because the said writ appears to be executed by a person who was not the legal deputy of Ish.am Pace, former sheriff of this county. Overruled. May 1839.

Layne, Wyatt vs. T.S. Swift et al

Motion to arrest the judgment in said case because
1. There was a special plea in bar in said case not stricken out or answered. 2. Because said plaintiff discontinued his suit as to James Murray one of said defendants on whom process was not served although. said Murray was sued as _____ Heyfron for motion. Continued under advisement.

Layne, Wyatt vs. Theodore S. Swift and others

Motion to set aside the sale under said execution because the said execution is void. Heyfron for motion. Nov. 1839.

Leath., Dorinda vs. John R. Leath. Bill of divorce.

Motion for order of publication in this case. Nov. 1841.

Leath, John R. & Co., vs. Silas Grey

Plaintiff's attorney moves the court to set aside the non suit and reinstate the case on the ground of _____ the trial and that witness expected and who have been subpoenaed were not. Did not attend and that the witness sworn did not prove what was neces-

sary to sustain the as counsel expected. Sustained. Peter Doty, atty. for plaintiff. May 1838.

Leath, John R. & Co. vs. Silas Ivy

Motion by defendant's counsel for a new trial in this case for the following reasons: 1. That the verdict of the jury was contrary to the instructions of the court. 2. The verdict of the jury was contrary to law and evidence. 6 day new trial granted. John Watts for motion. May 1840.

Leath, John R. & Co. vs. Silas M. Ivy

Motion by plaintiff's attorney for a new trial on the ground that the verdict of the jury was not sustained by proof. Sustained. R. McElroy for motion. May 1841.

Lee, Joseph. vs. Isaac Eubanks

Motion by plaintiff attorney to dismiss the certiorari in this case because: 1. The petition does not show any circumstances of how of injustice that the defendant might not have presented to the justice court or to a jury of five men. 2. The said certiorari is otherwise deficient and made for delay. S.L. Hussey for motion. May 1841.

Lee, Joseph vs. Isaac Eubanks

Motion by attorney of said Lee to quash the return of the deputy sheriff on the original warrant in this case issued by the court below and to set aside said warrant as irregular and void, because the said warrant was served by William H. White, who was not regularly appointed deputy sheriff, the said not having any authority to act as deputy from under the hand and seal of the sheriff and because said White did not file a certificate of his oath appointment in the proper court. S.L. Hussey. May 1841.

Second motion. Motion in this case to quash. the original warrant in this case issued by the court below because the same does not describe any particular six acres on the quarter section therein mentioned and the said warrant is therefore void for uncertainty. S.L. Hussey.

Lee, Joseph vs. Isaac Eubanks

Motion in this case by defendant attorney for arrest of judgment on the following grounds to wit: 1. The part of the land claimed in the plaintiff's complaint is not described or specified so that the particular part claimed is uncertain and undiscoverable. 2. A writ of habere facias possession issuing on said complaint on the judgment entered up in pursuance of the verdict founded on said complaint would be uncertain and void for uncertainty. 3. The sheriff would not know nor could know what part of the quarter section, what particular 6 acres to put in plaintiffs in possession of. Shields L. Hussey. Overruled. May 1841.

Lee, Owen vs. Th.as J. George (Fi fa)

Motion to quash an execution issued by the clerk of this court on the 22 day of July, 1839, against Owen Lee in favor of Th.as J. George for the sum of six hundred and twenty three dollars and sixty eight cents, purporting to be founded upon a judgment rendered against the said Lee in favor of said George on the 19 day of may 1837 for the Ficsan? following to wit: 1. Because there is no judgment of record in said court - whereas the clerk had any power and authority to issue said execution. Motion to quash. the fourth (forth) coming bond founded upon the above execution for the fiasans following to wit: 1. That there is no judgment of record in this court whereon said execution or bond is founded. 2. Because the penal sum in said bond is not equal to the amount of the said execution as the statute requires. 3. Because the said bond does not recite the service of the said execution or the amount of money and thereon as the statute in such cases

made and provided requires. 4. Because there is no alternative condition in said bond to bring fourth (forth)the purperty and to pay the money on an said Firi facias. Sustained. James McDugall attorney for motion. May 1839.

Lewis, Thomas vs. George W. Martin & John Freeland

Motion by plaintiff's attorney to perfreturte? the injunction in this case on answers of defendant filed. R. McElroy, plaintiff atty. 6 days overruled. Publication ordered. May 1840.

Leymour & McKinley vs. James P. Hill

Motion by defendant for a new trial of said case on the grounds 1. The proof in said case did not support the allegations of plaintiff's declaration. 2. The plaintiff did not prove demand and notice according to law. 3. The verdict was for more than was legally due on said order. Hayfron & Swift for motion. Continued under advisement. May 1839.

Little, Neal vs. James Brown

Motion to quash the attachment affidavit and bond for defects apparent thereon each. and every (one) of them being defective and insufficient. Peter Doty. May 1840.

Little, Neal vs. James Brown

Continued from last term. Motion to quash the attachment in this for defects apparent upon the affidavit, bond and attachment. Peter Doty, atty. Continued. Nov. 1840.

Little, Neal vs. James Brown

Motion to quash the attachment in this case is continued. Doty for defendant. Motion to quash the attachment in this for defects apparent upon the affidavit, bond and attachment. Peter Doty. May 1841.

Malone, D.R. vs. Hugh Carmichael

Motion by the plaintiff's attorney for have to amend the pleadings in this cause. J.M. Mann, atty. May 1839.

Man (Mann), William use of Eli Miller vs. J.F.G. Horgis and John B. Collins.

To this term of court filed fi fa for the sum of \$305.55 damages and the sum of \$21.27 1/2 costs. Motion to set aside the levy in this case because the fi fa appears to have been levied by one B.F. Parke as special deputy for one S.H. Cochran sheriff who it appears did not so deputise the said Parke. McCaskill & Hudspeth. for motion. Sustained. Nov. 1840.

Marsh., Bryant (Bearer) vs. Lawrence Hillyer?

Motion to quash the sheriff return for the following reasons to wit: It merely shows that service _____ by copy left at the house of Lawrence Hillyer without stating that defendant received them. And because in fact the defendant does not reside in this county but is a resident citizen of the state of Alabama. The return does not show a legal service. Withdrawn. Peter Doty, Atty. May 1839.

Martin, George W. vs. Thomas Lewis

Motion by defendant's attorney for security for costs on the ground that the plaintiff is not a resident citizen of the state of Mississippi. Continued. R. McElroy, atty. for the defendant. May 1839.

Martin, George W. vs. Thomas Lewis

Motion by the defendant attorney for a new trial on the ground that the verdict of the jury was not supported by the evidence and on newly discovered testimony. R. McElroy, atty. for defendant. Nov. 1839.

Martin, John vs. William Cottingham and Job Hammonce

Motion by plaintiff's attorney to reject the second, third, and fourth. pleas of defendant as frivolous. R. McElroy, Atty. for defendant. May 1840.

Martin, Joseph. vs. Stephens Felton

Motion in this case to strike out the plea because the same was not pleaded in time and for the plaintiff to have judgment. Hussey for motion. Nov. 1839.

May & Pesk vs. William Walker

Motion in this case to have satisfaction endorscl on the execution. Overruled. Nov. 1840.

McCallough. & Layman vs. Willis Merrett

Motion by defendant's attorney for new trial in this on the ground the verdict of the jury was not supported by the evidence. Sustained. R. McElroy, Atty. for defendant. Nov. 1839.

McCary, Lindsey vs. William Humphreys (garnishment)

Motion by defendant's attorney to quash garnishment in this cause on the ground that the same is not founded upon any judgment of the circuit court of said county as it purports to be. R. McElroy att. for defendant. Sustained. May 1839.

McCurdy, A.P. and Tool (admin.) vs. Edward T. Garrett

Motion for judgment against the sheriff in this case because his return upon the execution shows a voluntary neglect and levy this amount required by the execution without authority for such. neglect. Peter Doty, plaintiff's atty. May 1840.

McDugall, James vs. Surmon Deen

Motion in this case to have satisfaction endorsed on the execution. Wood pro motion. Overruled. Nov. 1840.

McDugall, James vs. Edmund Rainey

Motion to set aside the judgment in said case because the writ was not legally executed. Overruled. Heyfron & Swife, atty. May 1838.

McDugall, James vs. Edmund Rainey

Motion by plaintiff to require the sheriff to amend his return and the writ. James McDugal, atty. May 1838.

McDugall, James vs. Edmund Rainey

Motion by plaintiff's counsel to set aside the plea of abatement in this case and enter judgment in favor of plaintiff. Sustained. James McDugall, atty. May 1839.

McElroy, R. vs. H.C. Flack (In chancery)

The plaintiff in this cause moves the court for a judicial attachment against the defendant of contempt of the court in refusing to obey the injunction in this cause which. issued and was served regularly by the sheriff. R. McElroy. Nov. 1840.

McElroy, Ransom vs. Hugh C. Flack

Motion to dissolve the injunction in this case for the following causes, to wit: Because it appears from the petition of defendant & shows that _____ claims. Said McElroy that the above Flack is tenant of the premises described in said petition and the injunction is not only to stay waste but also to prevent trespass which would be in effect an _____. And also motion to quash the writ of injunction. Because said writ does not prove?

the fiat granting the same sign fiat only granting a writ to stay waste the with goes not only to stay waste but trespass latter would amount to an ouster? Allen for motion. Continued. May 1841.

McElroy & Swift vs. Robert Merrett & Willis Merrett

Motion for a new trial for the following cases to wit: 1. That the verdict of the jury is contrary to law and to the evidence in as much as the contract is illegal and contrary to good morals. 2. Because the jury found contrary to the instructions of the court in finding that impossible which is possible, to wit: the clearing of Robert Merritt from legal consequence and punishment of murder. 3. Because said note because the testimony was that the consideration failed in as much. as they did not clear him, the said Robert Merritt, from the legal consequences and punishment of murder. Sustained. James McDugall, atty. for defendant. May 1839.

McElroy & Swift vs. Robert B. Merritt and Willis Merritt

Motion by plaintiff attorneys for a new trial in said case because the verdict rendered in said case at this term was inconsistent with. law and evidence. Heyfron & Doty for the motion. Continued under advisement. May 1839.

McGee, John vs. Gabriel L. Collins

Motion in this case for a new trial because the' verdict is contrary to law and evidence. John Allen for motion. Motion suited. Nov. 1840.

McGee, John vs. Gabriel S. Collen

Motion by defendant attorney for new trial on the ground that the verdict of the jury contrary to evidence. R. McElroy atty. for defendant "on a wrong charge by the court to the jury". Sustained. May 1841.

McGee, John vs. Gabriel Colleen

Motion for presecution in this case for the cause defendant is about to remove property whereby plaintiff may lose his debt. Allen for the motion. Sustained. May 1841.

McLaurin, Hugh vs. Henry Howard, use of Daniel Rogers

Motion in this case by defendant that the court require the real plaintiff in this case to give security for the costs of this suit. Affidavit filed and motion entered on first day of May term, 1841. Hussey for motion. May 1841.

McLaurin, Hugh vs. J.M.C. Kirksey and William Humphries

Motion by plaintiff's attorney to strike out and reject the first and second pleas of defendant Kirksey because they are frivolous and unnecessary and for delay because they were not filed before the cause was called for trial-giving the plaintiff's attorney no time to answer the same. Peter Doty. Nov. 1840.

McWilliams, Neil vs. Nathan Ward

Motion in this case by defendant for security for costs for cuase filed. J. Allen, atty. May 1841.

McWooten & Brown vs. John Hamrick

Motion by defendant's attorney to quash. on the following grounds to wit: For plaintiff having brought two suits instead of one only on open defendants between the same parties both. of which purport to be due at the time the suits were commenced. R. McElroy, atty. for defendant. May 1841.

McWooten & Brown vs. John Hamrick

Motion to dismiss this case because no citation has been served the plaintiff. Wood for motion. Second motion. Motion to dismiss

this case because no citation has been served on the plaintiff. Wood. May 1841.

Ms. & Al. RR Co. vs. Clay & Clay

Plaintiff by attorney moves the court to strike out the second plea of the defendant because of duplicity in the pleading and because it is evasive and does not answer the allegations in the declaration on alleged matter in bar. Boyd and Cormick, defendant atty. May 1839.

Moore, R.R. vs. John M. Jackson

Motion by defendant's attorney to quash. fi fa bond in this cause on following grounds. 1. The fi fa is not founded on any judgment in the circuit court of said county as it purports to be. 2. Fi fa has no seal of the court affixed thereto. 3. For approval on bond. Sustained. R. McElroy, atty. May 1839.

Moore, William & Co. vs. H.M. Finley

Motion to quash the fi fa in this case vs. H.M. Finley and James Dale on forfeited bond issued November term 1840 for the sum of \$202.03 debt. 1. Because said bond is void in this that the condition to be performed in said bond is impossible the said bond being dated 5/11/ 1840 Conditioned to produce property to be sold on the first Monday of May 1840. So that the condition to be performed in said bond was to be performed on a day before the execution of the bond itself and on a day which had already passed away. Hussey for motion. Quashed. Nov. 1840.

Morris, Deforest & Wilkins vs. John Culbraith.

Motion for security for costs, the defendant having filed his affidavit at the last term of the court and given notice that the same would be required of the plaintiffs they being non-residents of this state. Peter Doty, atty. for defendant. Nov. 1840.

New, James vs. Southy Fisher

Motion to the judgment in this case and for new trial for the reasons that said suit was brought into this court to evade the statute relating to the jurisdiction of question of the because the verdict was contrary to the charge of the court and against law and evidence. Overruled. Marshall for motion. May 1839.

Nicks, William vs. Jacob Gilmore

Motion to quash the summons because it does not specify any particular tract of land and is sie? for uncertain. Doty for motion. May 1841.

Nicks (Nickles?), William vs. Jacob Gilmore

Motion for security for costs in this case as per defendant affidavit filed. Petter Doty atty. for defendant. May 1841.

Norris, Thomas P. (Bearer) vs. H.B. Warbington

Motion to set aside the judgment in said case because the said judgment was given by the court, or the courts, setting aside a previous demurrer which is contrary to law. Overruled. Heyfron & Swift, atty. for motion. May 1838.

Oakley, William vs. Duncan Calhoun

Right of property. Motion by plaintiff counsel to quash the affidavit for the writ of the right of property made and dismiss this application on the ground Th.a th.e affidavit is not made by any person legally authorized to make the same. R. McElroy atty. for motion. May 1841.

Oakley, William vs. Duncan Calhoun, Guardian - Right of property

Motion in this case for security for costs by the plaintiff in execution because plaintiff Oakley is a non-resident of this state but resides in the state of Alabama. Wood & Marshall for motion. May 1841.

Oakley, William vs. Jonathan S. Kinaid, Arah. Harris, Allen C. McDowell and Duncan Calhoun.

Motion by the said defendant, Calhoun, to set aside the judgment on demur in said case because said judgment was taken over the general issue which reached thro the whole declaration and has not been as yet determined by a jury. Joseph. Heyfron for motion. Nov. 1839.

Oka-la-Homa vs. William Thomas

Whereas the said plaintiff in this action did, at the last term of court, to wit at the May term, 1840, sue this defendant in an action similar to the present and did summon said defendant in this court at said term to answer for the commission of the same trespass as in this suit are alleged to have been committed by said defendant and whereas said plaintiff was suited for security for costs and under the 60 day of rule both? cases made which rule was not by said plaintiff complied with. and therefore said cause has been struck from the docket and whereas suit has again been brought by said plaintiff against this defendant without paying costs of the former suit. Therefore it is moved that said plaintiff be precluded from bringing his present suit and that said suit be struck from the docket because the costs of the former suit have not been paid. Hussey for motion. Nov. 1840.

Ok-la-Homa vs. William Thomas

Motion by defendant in this case for security for. costs, the usual affidavit required by statute having been made and filed. Hussey for motion. Sustained. Nov. 1840.

Ok-la-Homa vs. William Thomas

Motion by the defendant's attorney in this cause that all further proceedings in this cause be stayed till the costs of the former action be paid - the parties being the same and the cause of action being the same. Hussey for motion. Nov. 1840.

Owen, Willis vs. Elias Williams

Motion by the attorney of the said Owens to quash. the said supevocdeas? on the ground that the allegations laid in said petition for the said supevocdias are not true but on the contrary false. R. McElroy attorney for Owens. May 1839.

Page, C.G. vs. Pleasant Henderson

Motion by plaintiff's attorney for a new trial in this cause on the ground that the verdict is not sustained by the proof. R. McElroy, Atty. for plaintiff. Compromised by Doty in the drawing general issue. May 1841.

Parke, B.F. & others vs. Lewis Kennedy

Motion by defendants to dismiss this suit for the want of a declaration. Moore for motion. Continued. May 1841.

Payne, Hall & Co. vs. Richard M. Saul and Thomas D. Bourdeaux

Motion by the said Richard M. Saul, ones of the defendants for judgment against the sheriff of Lauderdale county, Miss., for the sum of \$500 one half for the use of said Saul and the other half for the use and benefit of the Literary Fund, for the following

cause to wit: Because said sheriff made a false return on the writ of capias and respondendum that issued in said cause in this that he through. said sheriff and by his deputy William H. White returned said writ executed generally, whereas in fact and in truth the copy of writ left with. said Saul or the instrument purporting to be a copy of said writ of capias and respondendum served on said Saul is wholly different from and is not a true and exact copy of said original capias and respondendum, in this that the original capias and respondendum issued on the 24th day of April 1840 and the copy of the capias and respondendum was issued on the 18th day of April 1840 - so in fact the copy writ is made to issue before the original writ in said case. 6 day overruled. Shields L. Hussey for motion. May 1840.

Permenter, H. vs. Daniel Stucky

Motion by defendant's attorney for security for case - the said plaintiff not being able to pay cost should (case) go against him. R. McElroy, atty. for defendant. May 1839.

Pickle, George S. vs. Samuel H. Cochran, sheriff.

Moved by attorney of said Pickle that the said Cochran be ordered by the court to pay back and deliver to the said George S. Pickle all monies in his said Cochran's hands arising from the sale of any property belonging to said Pickle which remains in the said Cochran's hands unappropriated on legal execution now in said Cochran's hands as sheriff. Hussey for motion. Sustained. Nov. 1840.

Pickle, Henry H. vs. Abraham Carr

Motion for security for costs, the plaintiff being a non-resident or transient person and not able to pay the same. Peter Doty, defendant atty. Nov. 1840.

Pigford, Wright vs. Ephraim Odom

The defendant in this case moves the court to quash. the fi fa and for costs and to direct the cost retaxed contrary to law and

this certain other respects improperly taxed. Doty for motion. Sustained. May 1841.

Price, James M. and Merideth Price vs. Nicholas J. Walton

Motion by the defendant in this case that the plaintiff be required to give security for cost for causes filed with. the papers of the case. Falean & McDugall for motion. May 1841.

Price, James M. by next friend Meredith Price vs. Nicholas J. Walton

Motion by plaintiff to set aside due non-suit on the ground of surprise. R. McElroy, attorney for motion. Sustained. May 1841.

Prince and Garrett vs. Benjamin F. Parke

Plaintiff in this case moved the court to strike out the defendant's plea in abatement because the same is insufficient and frivolous. Mont Carlton plaintiff. Tues. Nov. 20, 1838.

Redtoine, Hulum D. vs. William Roberts (assumpsit)

Motion for a judgment by default in said case because there is no plea on file in said case identified with the record of said case Hiedelburg H. & Swift. Counter motion judgment of non-pros for want of publication. R. McElroy, atty. May 1839.

Rices, Daniel vs. Mucindane Gains

Motion in this case by the plaintiff's attorney that the judgment in this case which was destroyed by fire in the clerk's office in the year 1837 be reinstated in the record of this court for the sum that appears to be due from the papers in said cause. Continued. May 1839.

**Ritchie, Andrew vs. H.H. Walker, Jarred Way (May) and William S?
James. Garnishment.**

Motion in this case to quash the garnishment for causes filed with the papers in this case. Falconer & McDugall for motion. May 1841.

Roberts, William vs. Elijah Gibson

Motion in this case that the plaintiff who is a non-resident of the state of Mississippi be required to give security for the costs that may be awarded to the defendant and also for the fees that are now due and that may hereafter become due to the officers of court. Entered on first day of May term 1841. Hussey for motion.

Rushing, Allen vs. Benjamin Ezell - certiorari

Motion to dismiss the certiorari in this case for the following reasons: Because the plaintiff after obtaining the said writ of certiorari has not served or caused to be served on the defendant any notice of said certiorari. John Stub atty. for defendant. 6 day, first granted then overruled. May 1840.

Rushing, Allen vs. Obadiah Hulet

Motion to quash the attachment on account of the following defects apparent to wit: The affidavit is defective. The bond is also defective and the attachment was illegally issued and has (has) no legal levy by the sheriff and has no cause of action endorsed on the same. Overruled. Peter Doty, atty. Nov. 1838.

Rushing, Allen vs. Lewis T (G?) Parke

Motion to quash. the original writ in said cause because the clerk's name is not signed to said writ and because said writ is

not signed and issued by the clerk of the circuit court of the county of Lauderdale or by any other person whatever. Shields L. Hussey, defendant attorney for motion. May 1839.

Russell, Abham vs. Duncan Calhoun, Swimon Been and John Barnett

Motion by the defendant's counsel in said case to quash the forthcoming bond taken therein for the following causes - because it does not appear thereby on what day the execution recited therein was levied. Joseph Hayfron for motion. Sustained, then overruled on Saturday. Nov. 1839.

Russell, David vs. H.H. Austin and Duncan Calhoun

Motion to set aside the demur to the said plaintiff replications? because the same is frivolous, manifestly intended for delay and is in other respects void, in-formal and of no effect. Hussey for motion. Overruled. Nov. 1839.

Seymour & McKinley vs. James P. Hall

Motion by defendant for a new trial in said case because the verdict of the jury in said case was inconsistent with the instructions given by the court and with. the law. Sustained. Heyfron and Swift, Arry. May 1838.

Sh.amburger, Absolom vs. Mary Shamburger (in chancery)

The complaintant moves a decree for divorce agreeably to the, prayer of his bill. 6 days decree pro _____ granted. May 1840.

Shannon, Thomas vs. George Pickle

Moved that the court order the record of this case on the minutes of this court to be amended by expunging and striking out from said record the following entry on the minutes. "Thomas Shannon vs. George S. Pickle. In this case let the judgment as to said George S. Pickle be set aside and an alias writ issued

against said Pickle and let said judgment as to the said William J. Wright be continued" the said entry being illegal, informal, irregular and certainly made by mistakes of the clerk founded on the following motion, found on the motion docket. "Thomas Shannon vs. George S. Pickle. Motion in this case by the defendant that the judgment by default therein be set aside the same being irregular in this that the writ therein appears by the return thereof not to have been legally executed. Joseph Heyfron for the motion." Hussey for motion. Nov. 1840.

Shannon, Thomas vs. George S. Pickle

Motion in this case by the defendant that the judgment by default therein be set aside, the same being irregular in this, that the writ therein appears by the return thereof not to have been legally executed. Hayfron for motion. Nov. 1839.

Shannon, Thomas vs. William J. Wright and George S. Pickle

Motion to quash the fi fa in this cause for the following reasons: 1. For want of a copy of the bill of cost endorsed thereon in intelligible words and figures. 2. Because the fi fa is conditional on its face. 3. Because it is not founded upon any legal judgment of the court. Sustained. R. McElroy atty. Nov. 1840.

Slides, John vs. Southy Fisher

Motion to set aside the verdict and judgment and for new trial on the grounds that the verdict was contrary to law and evidence. P. Doty plaintiff attorney. Sustained. May 1839.

Smith, John B. vs. William Cottingham

Motion for new trial in this case because it is respectfully suggested the court error (erred) in giving the following among others charged. That plaintiff could not recover possession for so much. as he proved but that if he proved only a part they must

find against him. That the court erred in not permitting the endorsement on? the back of a certain instrument purportly to be a deed showing that one Stephen Carter to whom defendant had transferred his possession, the premises_____the premises to the plaintiff and therefore the plaintiff coming into possession under color of title from defendant he could not dispute his rights. Wood, plaintiff atty. May 1841.

Smith., Lewis & Co. vs. Joel Williams

Fi fa returnable to this term for \$55.71. It is moved by said defendant to quash the fi fa returned in this case. 1. Because there are not 15 days between the date of said writ of fi fa and the return thereof. 2. Because it is in other respects insufficient. Hussey for motion. Sustained. Nov. 1849.

Spinks, Isaac vs. Willis Merritt

Motion by plaintiff's attorney in this case to dismiss the certiorari in this case, to quash the supersedeas and to award a procedendo to the justice court below: 1. Because the writ of supersedeas had not been returned into the court by the court below - as it was his duty to do so. (Note - probably speaking of JP court). 2. Because the supersedeas in this case was issued on an insufficient bond. In this case said bond does not appear to have been taken or approved by the clerk of the circuit court. Shields S. Hussey for motion. May 1841.

Stanton, Christian B. vs. Daniel C. Hays

Motion to set aside the verdict in this case and for a new trial for the following causes to wit: 1. Said verdict is contrary to law and evidence in this that the contract proved on trial varied materially from the one declared upon and in this that it appeared from the evidence on trial that plaintiff first violat

ed the contract proved on trial. 2. Because the evidence of a former recovery as offered by defendant was improperly ruled out by the court. J. Heyfron for motion. 6 day overruled. May 1840.

State vs. Aemel F. Adair

Motion to quash the indictment in said case on the following grounds: 1. For that said indictment blends two distinct offences which, are incongruous and subject the offender to different punishments. 2. It does not appear in or by said indictment that is the particular offence charged. 3. It does not appear that the offence charged was against the form of the statute in such cases. 4. It does not appear in or by said indictment that Samuel H. Cochran and the person assaulted was in the peace of God. 5. Because said indictment is otherwise uncertain, informal and insufficient. Sustained. Swift for motion. Nov. 1839.

State vs. Julius Alford

Motion by defendant's attorney to quash the bond in said case because said bond is payable to A.G. McNutt, Governor. 2. Because said bond is not listed in the name of the sheriff of this county. 3. Because the condition of said bond does not contain the recital of any legal charge against said defendants and for numerous other defects apparent on said bond. Sustained. Heyfron & Swift, attys. May 1838.

State vs. S.H. Cochran, sheriff

The defendant by attorney moves the court to quash the indictment for defects apparent thereon. Peter Doty, atty. for defendant. May 1840.

State vs. John B. Collins

Motion to strike this case from the docket on the grounds: 1. There is no sufficient record in this court to support a verdict of a jury. 2. The said defendant has been long harrassed by a

troublesome prosecution on an insufficient record. Heyfron & Swift for motion. May 1839

State vs. Martin Crane. A&B

Motion by defendant in arrest of judgment for the following causes: 1. Because the day on which, the indictment purports to have been found there was no grand jury impaneled in the county of Lauderdale. 2. That it is otherwise uncertain and informal and judgment cannot be pronounced upon the same. Sustained. James McDugall, atty. for plaintiff. May 1839.

State vs. James Dale. A&B

Motion to quash. the indictment for want of a legal endorsement thereon. Marshall & Baldwin for defendant. May 1838.

State vs. Thomas Davis and Sarah McPherson

Motion to quash the indictment for the following viz: 1. No other information. Nov. 1839.

State of Ms. vs. Thomas Davis, Hugh G. Brittian and William P. Evans

Motion to set aside the judgment rendered at the last term of this court and to quash the bond and bench. warrant in sc (second) case because the sc (second) bench warrant was issued and served contrary to law - not being tested of any sum of the court, which had been held as it should be. J.A. Marshall for motion. Nov. 1840.

State vs. Darling Dear

Motion to set aside the judgment in said case for defects apparent upon the face of the scire facius. Sustained. Heyfron & Swift, atty. May 1839.

State vs. Dearling Dear

Motion to quash the scire facial in this case for numerous defects apparent on the face thereof and for its uncertainty. Heyfron & Swift attys. Overruled since motion not made until after final judgment. May 1838.

State vs. James Findley

Motion by defendant's attorney to quash the indictment in this case on the grounds that it is not sustained by the records of this court and also for defects apparent thereupon. Continued. R. McElroy, atty. for defendant. May 1839.

State vs. Southy Fisher

The clerk moves the court to retax the cost in this case the same having been settled leaving out the certificate of Thomas D. Spain, witness, by mistake. Sustained. May 1841.

State vs. William M. Gaines

Motion by defendant counsel in arrest of judgment in this case on the following grounds. 1. The word chance used in the indictment does not by statute constitute any game called Heads & Tails. 2. There is no such game as the game of Heads and Tails for the word chance would constitute a game it could only be a game of Heads on Tails and not Heads and Tails. 3. The offense charged in this indictment is not an offense indictable at law. R. McElroy for defendant. Sustained. May 1841.

State vs. A.W. Gary (Exhibiting unlawful weapon)

Motion to quash the bond given by said Gary with H.B. Warbington and John B. Collins security on the grounds that the same is not given in pursuance of the order of the Justice of the Peace by whom said Gary was examined on said charge and also because the charge mentioned in said bond against said Gary is one unknown

to the law and for other defects apparent on said bond the same being inconsistent. Heyfron & Swift for motion. Sustained. May 1839.

State vs. Henry Gilcrease

Motion by defendant's attorney to quash the indictment for defects apparent thereupon. Sustained. R. McElroy atty. for defendant. Nov. 1840.

State vs. Thomas Gilcrease - larceny

Motion by defendant's attorney to quash indictment for defects apparent thereupon. R. McElroy atty. for defendant. May 1840.

State vs. James Hamrick

Motion for retaxation of costs in the case. May 1841.

State vs. James Hamrick - A&B

Motion for a relaxation of costs in this cause for error in the bill thereof. Wood for motion. Continued. May 1841.

State vs. John S. Harrell

Motion by defendant's attorney to quash indictment and bond for defects thereupon. Sustained. R. McElroy, atty. May 1839.

State vs. John S. Harrell

Motion by defendant attorney to quash the indictment - defect apparent thereupon and also on the grounds that there is no record in said court showing that indictment was even found by a grand jury of Lauderdale County. R. McElroy, atty. for defendant. Continued. May 1839.

State vs. John S. Harrell

Motion by defendant in this case in arrest of judgment for the following causes to wit: 1. Because it does not appear by the capition on the record that the grand jurors resided in the county of Lauderdale. 2. Because it does not appear that the name of the prosecutor is endorsed on said indictment. Joseph Heyfron for motion. 6 day overruled. May 1840.

State vs. John L. Harrell - A&B

It is moved to quash the bill of indictment presented by the grand jury against said Harrell. 1. Because said indictment does not allege that the grand jury were a grand jury of the State of Mississippi as it should have done. 2. Because said indictment alleges that the said grand jury was impaneled and sworn in and for the state of Mississippi as well as the county of Lauderdale. 3. Because said indictment does not allege what the said grand jury were impaneled and sworn to do as required by the statute. Hussey for motion. Sustained. Nov. 1840.

State vs. Luther E. Johnson

Motion to set aside the verdict because the same was contrary to the law and evidence in the case. Peter Doty, atty. for defendant. Nov. 1839.

State vs. Jacob Lethco?

Motion to quash indictment for want of certainty there-in. R. McElroy, atty. for defendant. Nov. 1840.

State vs. Lindsey McCary

Same motion as in #53. Heyfron for motion. May 1839.

State vs. Lindsey McCary

Motion by defendant's attorney to quash the bond in this cause. R. McElroy, atty. May 1840.

State vs. James M. McDaniel (Drawing deadly weapons)

Motion by defendant to quash the indictment in this cause because (it) says that there is no venire in this court returnable to the term at which the indictment was found. 2. Because the bill of indictment was not found by a grand jury of the county in which the offense was charged in the bill of indictment was committed. 3. Because there was no court at the term at which. the bill of indictment purports to have been found - there being no record in this court showing that there was a court as it would be if there was any in as much as this is a court of record. McDugall & McElroy. May 1839.

State vs. James McDowell

Motion by defendant attorney to set aside the forfeiture on the recognisant bond in said case because it does not appear of record that the bond was legally taken. Walker for motion. Sustained. Nov. 1839.

State vs. Allen McIntosh

Motion to quash the bond of defendant in this case because it is made payable to A.G. McNutt, Governor, and not to the state of Mississippi. Sustained. Mounge atty. for motion. May 1838.

State vs. William Mason, Epps R. Brown and Samuel Warbington A&B

Motion by defendants to quash the recognizance in the case because there is but one penal sum in the recognizance and alleges two instances in which the said recognizance may be

forfeited without separating the penalty sum for each. and that the court would not be able to enter up a forfeiture in either case. James McDugall, atty. for motion. Overruled. May 1839.

State vs. Willis Merritt and Mourmn Crowell

Motion by defendant's attorney to quash the indictment in this case for defects apparent thereupon. R. McElroy, atty. for defendant. Nov. 1839.

State vs. Moses Moore

Motion by defendant's attorney to quash the bond taken in this cause. R. McElroy, atty. for defendant. May 1840.

State vs. Hezekiah R. Murphy - assault with, intent to murder

Motion for a new trial for the causes filed in this case. James McDugall, atty. Nov. 1839.

State vs. Thomas Rigdon. Exhibiting deadly weapon.

In this case the defendant by counsel moves this court to quash the indictment because the appeared charged is barred by the statute of limitations as appears upon the face of the indictment. In this case the defendant by counsel moves the court to quash the indictment for causes apparent upon the face of the indictment in this: Because the offense if committed at all is barred by the statute of limitations. Because at this time alleged in the indictment at which the offense or as charged to have been committed it was impossible that the offense, if any, could have been committed by the defendant. Falconer, McDugall, attorneys for defendant. May 1841.

State ve. John Sims

Motion to quash. indictment in this case for the want of certainty therein. R. McElroy for defendant. Nov. 1840.

State vs. Nicholus J. Walton

Motion by the defendant's attorney to quash the indictment in this case for defects apparent thereupon. R. McElroy, atty. for defendant. May 1849.

State vs. N.J. Walton

Motion by defendant's attorney to quash. the indictment for defects apparent thereupon. Sustained. R. McElroy, atty. for defendant. Nov. 1840.

State,vs. Horatio B. Warbington - perjury

Motion by Joseph. Heyfron whose name is marked as the prosecutor on the indictment in said case to quash. said indictment because said Heyron is not now and never has been the prosecutor in said case. Joseph Heyfron. Sustained. Nov. 1839.

State vs. Jacob Warbington

Defendant by attorney moves the court to quash the indictment because no prosecutor's name is endorsed on the bill of indictment as required by statute. Timothy Tug-a mutton being a fictitious name and not such a prosecutor as contemplated by the statute. P. Doty. Nov. 1839.

State vs. Samuel Warbington - adultery

Motion to quash the indictment in said case for the following causes, to wit: Because it does not appear by said indictment that the offense therein charged was committed within one year previous to the time said indictment was found by the grand jury. Hayfron for motion. Nov. 1839.

State vs. John Wiggins

Motion by defendant's attorney to quash indictment for the want of certainty therein. Nov. 1840.

State vs. Wiley and Bates - affray

Motion by defendant Bates' attorney to quash. indictment for defects apparent thereupon. R. McElroy, atty. for Bates. May 1840.

State vs. Wiley and Bates

Motion by the attorney for the defendant Bates to quash. the indictment in the case for defects apparent there-upon. McElroy, atty. for defendant Bates. May 1840.

State vs. C.M. Wiley - retrial

Motion to quash the indictment for the following reasons: It does not specify the person to whom sold and for these reasons are uncertain. Wood and Marshall. May 1841.

State vs. Elias Williams (riot)

Motion by said Elias Williams to quash the indictment in said case because said indictment does not explicitly mention any particular offense and is uncertain in every respect and informal. Swift for defendant.

Steel, John

Motion to strike John Steel from the roll of attorneys of this county for the following reasons: 1. That the said John Steel has been guilty of a misdemeanor in feloniously taking and carrying away a certain book called Stephens on pleading of the property of James McDugall as we believe, sometime in the year 1839 and converting the same to his use. Signed John Watts, JJH Morris,

Benjamin C. Appelt?, Joseph Heyfron, James McDugall, John Allen, George Wood, Ransom McElroy, Shields L. Hussey, Peter Doty and J.A. Marshall. This withdrawn on 11/23/1840. May 1840.

Steel, John, Esqr.

To John Steel, Esqr: 23 November 1840.

You will hereby take note that during the present November term of the circuit court of Lauderdale County now in session and as early as the same can be heard, a motion will be made to said court to strike your name from the roll of attorneys and counselors at the law upon the following specifications: 1. For want of a good moral character. 2. For a violation of your oath in failing to demean yourself with one fidelity as to the court and your clients. 3. For having committed the crime of perjury in the circuit court, Clarke County in giving your testimony in the case of the State against Hainsworth. as to whether your fee was absolute or conditional. 4. For having feloniously endeavored to steal and convert to your own use a book called Stephens on Pleading by erasing and obliterating the name and figures therein the said book having been loaned to you by Voleny? E. Howard as by your own confession. 5. For having secretly, fraudently and corruptly filed a plea in the case of David B. Thompson against Hunter and Hunter thereby stealing into said cause the plea aforesaid. Marshall, McDugall and Hussey. Nov. 1840.

Steele, John vs. Motion

We the undersigned members of the bar, practicing at this court, at this term have examined the charges exhibited against John Steele and pray that the matter be investigated by the court as a matter of justice to the said Steele, this court and the reputation of the bar. J.J.H. Morris, John Watts, Benjamin C. Oppelt, Henry Calhoun, J.A. Marshall, Shields L. Hussey, John Allen, J.J. Johnston, James McDugall and Peter Doty. Nov. 1840.

Steele, John vs. Exparte

Motion by R. McElroy and the said John Steele comes and moves the court to quash the first, second, third, and fourth specifications for reasons filed and to make up an issue and for trial by jury. John Stue counsel. Nov. 1840.

Stephens, C.W. vs. James Hughs (se of Adair)

Motion to quash the bond in this case because the same is not taken according to the act of assembly in such case provided 5/20/1839. Marshall on motion. May 1839.

Tesen, William vs. Elias Williams & Thomas Hightower

Motion by defendant's attorney to quash the execution and the forthcoming bond in this case for the following reasons: 1. There is no judgment upon which execution was issued. 2. The forthcoming bond was not returned forfeited by the sheriff. 3. Said bond had no alternative in the condition thereof. Henry Calbsecr?, atty for defendants. Sustained. May 1839.

Thompson, David B. vs. Hunter & Hunter

Motion by the plaintiff's attorney to strike out the plea filed at the last term of this court nunc pro tunc for the following reasons: It does not correspond with suit. On the ground that it was not legally pled. R. McElroy, atty. for plaintiff. Nov. 1840.

Trawick, James A. vs. A.N. Garey & E.R. Baldwin?

Motion to strike out., the plea in abatement because it is frivolous and not filed in time and alleges no motion which can be placed in abatement. Peter Doty, plaintiff's atty. Nov. 1838.

Tutt, James B. vs. John Elliott

Motion by defendant counsel to quash. the forthcoming bond in said case taken on a fi fa the 26th day of July 1838 for the sum of \$1356.33 for the following reasons to wit: 1. Because the penal sum in said bond specified is not such. as the statute, requires because it is larger than double the amount of the sum for which the fi fa issued. Because the said bond does not recite the service of the said fi fa and is not returned as forfeited. 3. Because there is no alternative condition in said bond to bring forth property or pay the money in said fi fa demanded. Sustained. McDugall and Wilson, attys for the motion. May 1839.

Tutt, James vs. John Elliott, Jesse Lucy and John B. Spain (fi-fa - debt)

Motion by defendant's counsel to quash the said fi fa for the following reasons: 1. Because there is no judgment in debt in this court against the said defendants. 2. Because the action sent up to the High. Court of Errors and appeal for revision was an action of assumpsit and not debt. Sustained. McDugall & Will for the motion. May 1839.

Tutt, James B. vs. Reuben Green and John Elliott.

Motion to set aside judgment by default. M. Baldwin, atty. for defendant. May 1838.

Tutt, James B. vs. Reuben Gunn and John Elliott

Motion by plaintiff attorney to reject the plea of defendant having filed on the ground that the same is frivolous and intended for delay. R. McElroy, atty. for defendants. May 1839.

Walker; D. & J.B. vs. Horatio" B. Warbington

Motion for judgment against the sheriff of Lauderdale County for the sum of 9590 to be applied and given as the statute directs

for the following causes: Be-cause said sheriff by his deputy, Thomas Hightower, has made a false return on a certain writ of fi fa issued in said case which consists in this that said return states said writ to have been executed on 31st day of August 1839, which was Saturday when truth and in fact said writ was executed on the first day of September 1839 which was Sunday. Joseph. Heyfron for motion. Nov. 1839.

Walker, J.B. & D. vs. Horatio B. Warbington

Motion to quash the return on the writ of fi fa in said case and the forthcoming bond taken thereon for the following causes to wit: 1. Because said writ was executed on Sunday. 2. Because said writ is directed to the sheriff of Kemper County and executed by the sheriff of Lauderdale County. Joseph Heyfron for motion. Sustained. Nov. 1839.

Warbington, H.B. vs. Benjamin Merrett

In this case the plaintiff moves the court for an attachment to compel the sheriff to make his return. Overruled. Plaintiff attorney Peter Doty. Second motion: In this case the plaintiff asks leave to amend his declaration by inserting an amendment of the non residence of the maker? Robert R. Merritt of the note who is notarized in this action. Sustained. Peter Doty atty. for plaintiff. May 1838.

Warbington, H.B. vs. Benjamin Merritt

Plaintiff moves the court for leave to amend the declaration so far as to insert an amendment of the non-residence of Robert R. Merrett who is a joint maker of the note on which said suit is brought and not sued in this action. Peter Doty, atty. on Tuesday morning July 17, 1838. May 1839.

Warmack & Harwell vs. Thomas Hightower

Motion by the plaintiff's attorney for have to amend the pleadings in this cause. Sustained. R. McElroy, atty. May 1838.

Weed, N&H & Co. vs. Cleveland Robbs (attachment)

R. McElroy and James Hair, amicus curia, moved the court to quash. the attachment for the following reasons: 1. Because the affidavit made in said case is not in persuance to the statute in tall case made and provided but state that the affiant verely believed that C. Robbs & Co. are non-residents of this state. 2. Because the bond is deferrant in note stating that the plaintiff in case he fails is to pay and satisfy cost of suit. 3. Because there is no cause of action rendered on the said attachment. 4. Because the said affidavit bond and attachment are in other respects uncertain, informal, insufficient and lack substance. May 1839.

White, Elijah vs. Henry Paul

Motion to set aside the judgment taken by default in this case and leave to plea to the merits on the affidavit of defendant. R. McElroy, atty. for defendant. Sustained. May 1839.

White, Elijah vs. Henry Paul

Motion by defendant's attorney for a new trial because the verdict was not sustained by the proof on the charge of the court. 6 day granted. R. McElroy, atty. for defendant. May 1840.

Whitfield, W.J. vs. Andrew Eastis

The defendant in this case moves the court to open the judgment by default on the grounds of minutes? disclosed in affidavit on file. Shields J. Hussey, atty. for defendant. May 1839.

Williams & Dow vs. E.R. Adair

Motion to set aside verdict in this case because it was taken when a motion undisposed of remained upon the docket. Because no legal security was given according to the order of the court. Moore for motion. Over-ruled. May 1841.

Williams, Elias vs. Willis Owens

Motion to quash the fi fa in this petition mentioned for the reason that they issued having no judgment for their foundation and because the same purports to be issued on an original judgment against Elias Williams and do not show by what authority they issue against the property. William Keelson and Brown. Marshall for the motion. First overruled - then sustained. May 1839.

Williams, Elias vs. Willis Owens

Motion to revive the rule of reference granted at the last term of court, the referees having failed to make a decision. May 1841.

Williams, Elias vs. Wilis Renny?

Motion to confirm or conform the made in this case. Nov. 1841.

Williams, Joel, Samuel Agnew, William Bruner and Daniel Rogers vs. John H. Cole use of Elijah Gibson

Motion in this case that the court compel the real plaintiff, being a non-resident of Mississippi, to give security for the costs that may be awarded to the defendant and also for the fees that may become due and that are now due to the officers of the court. Entered on first day of May term 1841. Hussey & Watts. May 1841.

Wood, James vs. James P. Price

Motion to quash. the proceedings in this case on the ground that the petition has taken no steps to prosecute his suit and a to the Justice of the Peace.

Wood, Johnston & Burrett vs. B.F. Parke

Plaintiff moves the court to judgment for want of a plea. Boyd & Cormick attorneys for plaintiff. Second motion to set aside plea of defendant and have asked to amend the declaration. May 1838.

Wright; Daniel, use of James Wood vs. James P. Price.

Motion by defendant's attorney for a new trial on the grounds that the verdict of the jury was not supported by the evidence. 6 day overruled. R. McElroy, atty for defendant. May 1840. Nov. 1839.