

Mills Vs. St. Clair County

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Appeal No. : 49 U.S. 569

Appellant : Mills

Respondent : St. Clair County

Judgement :

Mills v. St. Clair County - 49 U.S. 569 (1850)

U.S. Supreme Court Mills v. St. Clair County, 49 U.S. 8 How. 569 569 (1850)

Mills v. St. Clair County

49 U.S. (8 How.) 569

ERROR TO THE SUPREME COURT

OF THE STATE OF ILLINOIS

SYLLABUS

In the year 1819, the Legislature of Illinois authorized Samuel Wiggins, his heirs and assigns, to establish a ferry on the east bank of the River Mississippi near the town of Illinois, and to run the same from lands "that may belong to him," provided

the ferry should be put into actual operation within eighteen months.

At this time he had no land, but within the eighteen months acquired an interest in a tract of one hundred acres.

In 1821 another act was passed authorizing him to remove the ferry "on any land that may belong to him" on the said Mississippi River, under the same privileges as were prescribed by the former act.

The words of this act "on any land that may belong to him" must be construed to apply to the land which then belonged to him, and not to such as he obtained after the passage of the act, *viz.*, in 1822.

The following rules for construing statutes applied to the case, *viz.*,

First, that in a grant designed by the sovereign power making it to be a general benefit and accommodation to the public, if the meaning of the words be doubtful, they shall be taken most strongly against the grantee and for the government, and therefore should not be extended by implication in favor of the grantee beyond the natural and obvious meaning of the words employed, and if these do not support the right claimed, it must fall.

Secondly, if the grant admits of two interpretations, one of which is more extended and the other more restricted, so that a choice is fairly open, and either may be adopted without any apparent violation of the apparent objects of the grant, if in such case one interpretation would render the grant inoperative and the other would give it force and effect, the latter, if within a reasonable construction of the terms employed, should be adopted.

The jurisdiction of this Court under the twenty-fifth section of the Judiciary Act extends to a review of the judgment of a state court where the point involved was the alleged violation of a contract granting a ferry right by a state to an individual, but it does not extend to a case where the alleged violation of a contract is that a state has taken more land than was necessary for the easement which it wanted, and thus violated the contract under which the owner held his land by a patent. It

rests with state legislatures and state courts exclusively to protect their citizens from injustice and oppression of this description.

Mills and others filed their bill in chancery in the state court of Illinois, seeking to obtain an injunction against the defendants

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in error. The bill states the case of the complainants as follows.

The people of the western part of Illinois had from the earliest settlement of that country maintained a constant commercial intercourse with the Town of St. Louis, and long felt the necessity for increased facilities in crossing the Mississippi River. For the purpose of securing these facilities, the state made a contract with Samuel Wiggins for the establishment of a ferry across that stream, with boats to be propelled by steam or horse power. An act of the general assembly was passed, which was approved on 2 March, 1819, which was as follows:

"An act to authorize Samuel Wiggins to establish a Ferry upon the Waters of the Mississippi. Approved March 2, 1819."

"SEC. 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that Samuel Wiggins, his heirs and assigns, be, and they are hereby, authorized to establish a ferry on the waters of the Mississippi near the Town of Illinois in this state, and to run the same from lands at the said place that may belong to him. Provided that he shall not use any boat or watercraft, except such as shall be propelled or urged to the water by steam, horses, oxen, or other four-footed animals. Provided that the said Samuel Wiggins, his heirs and assigns, shall have the said ferry in actual operation within eighteen months from and after the passage of this act."

"SEC. 2. And be it further enacted, that no person or persons except those who have ferries now established at this place shall establish any ferry of the description aforesaid within one mile of the ferry established under this act. And if any person or persons shall, contrary to the provisions of this act, run any boat or

boats of the description aforesaid, he, she, or they shall forfeit every such boat, with its furniture and apparel, to the said Samuel Wiggins, his heirs and assigns, which may be attached and recovered before any court in this state having competent jurisdiction."

"SEC. 3. And be it further enacted that it shall and may be lawful for the said Samuel Wiggins, his heirs or assigns, to demand and receive the same rates of ferriage as are now of right demandable at the ferry established nearest to the ferry authorized to be established by this act. Provided that no more shall be charged for a wagon, cart, or other carriage, if loaded, than could be charged if empty."

"SEC. 4. And be it further enacted that the ferry hereby established shall be subject to the same taxes as are now or hereafter

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may be, imposed on other ferries within this state, and under the same regulations and forfeitures. And that if the provisions of the second section of this act shall be made to appear to the general assembly to be injurious to the public good, that then, and in such case, the said second section may be repealed."

At the date of this act, Wiggins did not own any land near the Town of Illinois; but within the time allowed by the act for the establishment of the ferry, he purchased a tract of land of one hundred acres and established the ferry with boats propelled by horses, according to the terms of the act.

He increased the means of transportation as the public wants required, and changed the boats employed from boats propelled by horses to boats propelled by steam so as to comply with the letter and spirit of his contract with the State of Illinois and meet all the demands of the increasing population and commerce.

The bill claims that under this Act of 2 March, 1819, Samuel Wiggins, his heirs and assigns, were entitled to the perpetual franchise of maintaining a ferry across the Mississippi from any point near the Town of Illinois, upon any land that might at

any time belong to him or them.

The bill states that the bank of the Mississippi opposite the Town of St. Louis is an alluvial formation which is continually falling into the stream, and that the character of the stream is such that, by reason of the frequent changes in the channel, the sudden formation of sandbars, and the falling of the banks, it became necessary for Wiggins, in order to fulfill his contract with the State of Illinois, to acquire title to a large space of land on the bank of the river in order to change the place of landing as the changes in the river and in its banks might require.

The Legislature of Illinois, appreciating this necessity and recognizing the franchise as perpetual, passed an Act on 6 February, 1821, the essential parts of which were as follows:

"An act to authorize Samuel Wiggins to make a Turnpike Road, and for other Purposes. Approved February 6, 1861."

"SEC. 1. Be it enacted by the people of the State of Illinois, represented in the general assembly, that Samuel Wiggins, his heirs or assigns be and hereby are authorized to make and construct a turnpike road, of one hundred feet wide, to commerce on the Mississippi River, opposite to St. Louis,

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on lands that may belong to him, to run thence across the American Bottom to the bluffs within two miles of George Swaggart's, and to construct and erect all necessary bridges on said road, and that he or they be and are hereby authorized to build and make said turnpike road through the lands of any person or persons whomsoever, except yards, gardens, orchards, or dwelling houses; that when the aforesaid road is about to be carried through any improved land, the maker of said road shall first obtain the consent of the proprietor or proprietors of said grounds, and should the parties not agree on the amount of said damages, then a jury of six reputable freeholders should be summoned, and being duly sworn before any justice of the peace of the county faithfully and impartially to assess the damages, which damages shall be paid before the said road shall be permitted to pass

through such grounds."

"And whereas the said Samuel Wiggins, his heirs and assigns, were authorized to establish a ferry upon the waters of the Mississippi River near the Town of Illinois in this state, and a sandbar having been formed since that time opposite said ferry, therefore:"

"SEC. 5. Be it further enacted that the said Samuel Wiggins, his heirs and assigns, be and they are hereby authorized to remove said ferry on any land that may belong to him or them on the said Mississippi River under the same privileges as were prescribed by the act entitled 'An Act to authorize Samuel Wiggins to establish a ferry upon the waters of the Mississippi,' approved March 2, 1819."

On 13 July, 1822, Wiggins acquired title to a tract of four hundred acres of land adjoining the tract from which he first ran his ferry. The tract so acquired is situated on the bank of the river below his first tract, and was necessary to the owners of the ferry franchise in order to secure a convenient landing of the boats as changes occurred in the channel or in the bank of the river.

The bill states sundry conveyances and descents by which the complainants have become invested with the title to all the land held by said Wiggins and with the franchise granted by the State of Illinois.

It is also averred that Wiggins, while the owner of the franchise, fulfilled all the duties and obligations which he had assumed under his contract with the State of Illinois, and that his assignees, owners of said franchise, have ever since his transfer of the franchise in like manner fully discharged those duties; that speedy, secure, and comfortable passage has been

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at all times afforded for all persons and property offered to be crossed over the river in such vessels only as are required by the act granting the franchise.

The bill then states an Act of the Legislature of the State of Illinois approved on 2 March, 1839, by which commissioners were appointed to locate a road and ferry

landing between Cahokia Creek and the Mississippi River, opposite St. Louis; the road and ferry landing to be three hundred feet wide, upon the most eligible ground for the purpose. This act authorized the County Commissioners' Court of St. Clair County to cause the land on which the road and ferry landing should be located to be condemned, and pay the owners of the land the damages, and after such payment the said court should have power to enter upon the land so condemned and establish a ferry across the Mississippi River, and might either carry on the ferry for the county itself or lease it for any term not exceeding five years to any lessees.

The commissioners thus appointed located the road and ferry landing, three hundred feet wide, upon the land which Wiggins acquired in July, 1822, and which was conveyed by him with the franchise.

The land was condemned, and its value estimated at six hundred dollars, being less than the annual ground rent which it would produce without any connection with any ferry privilege.

In estimating the damages to be paid, the jury was expressly directed to confine its estimate of the damages to the value of the land itself, and not to consider any interference with the ferry franchise of the complainants as a subject of compensation.

The bill states that the County of St. Clair, through its agents, entered upon and took in possession the said lands so condemned, and has leased the same, together with the ferry authorized by the said act of 1839, to James Harrison at a yearly rent of \$800, and that a ferry has been established from said land to the City of St. Louis. The rates of ferriage charged by said Harrison are fixed in his lease, exhibited with the bill, as exhibit S. No. 18.

The complainants aver that the land so taken from them is a part of their ferry landing, as authorized by the two acts of the legislature under which they claim, and that the land so taken is indispensable to the exercise of the franchise with which they are invested. From time to time they have been compelled to change

their place of landing as the changes in the river and its banks and sandbars required, so that the whole

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front on the river has been necessary to the enjoyment of their franchise and the performance of their duty, and that the said land so taken from them is not only the most convenient point on their land for their ferry landing, but is the only point where boats can securely be landed without running far up the stream, so as to make their trip about twelve hundred yards longer than if they still owned and could use the land so taken from them.

The complainants allege that the Act of the Legislature of Illinois of March 2, 1839, authorizing the taking of a part of their ferry landing, is a violation of the first clause of the tenth section of the first article of the Constitution of the United States, which prohibits the states from passing laws impairing the obligation of contracts.

The bill prays for an injunction to restrain the defendants from maintaining a ferry from the land so taken from the complainants.

To this bill there was a demurrer, which was sustained by the Circuit Court of St. Clair County and the bill dismissed. An appeal was taken to the supreme court, and the decree of the circuit court affirmed.

From this decree of the Supreme Court of the State of Illinois a writ of error brought the case up to this Court.

It was argued by Mr. Gamble and Mr. Webster, for the plaintiffs in error, and Mr. Breeze, for the defendants.

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MR. JUSTICE CATRON delivered the opinion of the Court.

By an Act of March 2, 1839, the Legislature of Illinois appointed five commissioners to locate a road and ferry landing, three hundred feet wide, on the

east bank of the River Mississippi, opposite to the City of St. Louis; the road to extend back to Cahokia Creek. The road and landing were accordingly located, the distance from the river to the creek being about sixty poles. The ferry having gone into operation under the act of 1839, this bill was filed seeking to obtain a perpetual injunction against an exercise of a ferry privilege on the ground, among others, that Samuel Wiggins and his assignees were entitled to the exclusive ferry right at that place, by contract with the State of Illinois, and that said contract was violated by

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the act of 1839 and the establishment of a road and ferry under and by force of its provisions. The Supreme Court of Illinois having decided that the state law and the acts done pursuant thereto did not violate the contract made with Wiggins, and that it was not opposed to the Constitution of the United States, that court proceeded by a final decree to dissolve an injunction granted *nisi* and to dismiss the bill. To reverse this decree, on the grounds stated, a writ of error has been prosecuted to the Supreme Court of Illinois from this Court under the twenty-fifth section of the Judiciary Act of 1789.

The contract relied on by the defendants was made with Wiggins by two acts of the Legislature of Illinois. The first act, approved March 2, 1819, authorizes Samuel Wiggins, his heirs and assigns, to establish a ferry on the east bank of the River Mississippi near the Town of Illinois, and to run the same from lands "that may belong to him," provided that said ferry should be put into actual operation within eighteen months from and after the passage of that act. And it was also provided by the second section that no other person should thereafter establish any ferry within one mile of that established by Wiggins, with this reservation:

"That if the provisions of the second section of this act shall be made to appear to the general assembly to be injurious to the public good, that then and in such case the second section may be repealed."

Wiggins had no land of his own on the river near the Town of Illinois when the above act was passed, but within less than eighteen months he acquired an interest in a tract of land of one hundred acres, part of which lay between Illinois Town and the river, and extended to a considerable distance above it, and on this tract he established his ferry.

On 6 February, 1821, Samuel Wiggins had another act passed in his favor by the Legislature of Illinois, authorizing him to make a turnpike road, to commence on the Mississippi River opposite to St. Louis, on lands that "may belong to him," and to run across the American bottom to the bluffs. The act further provides:

"And whereas the said Samuel Wiggins, his heirs and assigns, were authorized to establish a ferry upon the waters of the Mississippi River near the Town of Illinois in this state, and a sandbar having been formed since that time opposite said ferry, therefore:"

"SEC. 5. Be it further enacted that the said Samuel Wiggins, his heirs and assigns, be and they are hereby authorized to remove said ferry on any land that may belong to him or them on the said Mississippi River, under the same privileges as were prescribed by the act entitled, 'An act to authorize Samuel

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Wiggins to establish a ferry upon the waters of the Mississippi,' approved March 2, 1819."

By an Act approved January 19, 1833, so much of the acts of 1819 and 1821 as prohibited another ferry from being established within one mile of Wiggins' ferry landing was repealed. This restriction is therefore out of the case.

On 13 July, 1822, Wiggins obtained by purchase from Julia Jarrot a tract of one hundred acres lying below the tract first acquired, adjoining thereto on the south, and fronting on the river, and it is upon this tract that the new ferry and road were located under the act of 1839. The parties respectively assume, and so the court below held, that the establishment and regulation of ferries across navigable

streams is a subject within the control of the government, and not matter of private right, and that the government may exercise its powers by contracting with individuals. We deem this general principle not open to controversy, and in regard to so much of the controversy as involves the contract itself no material difficulty exists as to what principles of law shall govern; only two general principles need be invoked in construing the acts of 1819 and 1821, which are first that in a grant like this, designed by the sovereign power making it to be a general benefit and accommodation to the public, the rule is that if the meaning of the words be doubtful, they shall be taken most strongly against the grantee and for the government, and therefore should not be extended by implication in favor of the grantee beyond the natural and obvious meaning of the words employed, and if these do not support the right claimed, it must fall. Such is the established doctrine of this Court, as was held in the case of [*Charles River Bridge v. Warren Bridge*](#), 11 Pet. 544, [36 U. S. 547](#) . Secondly, if the grant admits of two interpretations, one of which is more extended and the other more restricted, so that a choice is fairly open and either may be adopted without any violation of the apparent objects of the grant, if in such case one interpretation would render the grant inoperative and the other would give it force and effect, the latter, if within a reasonable construction of the terms employed, should be adopted.

Testing the contract by these rules, and what are the complainants entitled to, under the acts of 1819 and 1821? By the first act, Wiggins was to establish the ferry near the Town of Illinois, "and to run the same from lands at said place which may belong to him." At the time of the act was passed, Wiggins owned no land near the Town of Illinois, and if the grant was in the present tense, and extended only to land

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that was then the property of the grantee, the act of assembly had no operation and was worthless. But we suppose the words employed were not restricted to the time when the act was passed; the grantee was allowed eighteen months to put the ferry into operation, and he was to run his boats from his own lands -- that is, from lands which might belong to him at the time the running commenced -- and

for this there was great reason, as the opposite shore lay within another state, and there also a ferry landing had to be secured. The matter was one of speculation, and lands could not with propriety be purchased at high prices before the privilege was secured on both banks. And this construction, as we apprehend, is the one that the Legislature of Illinois put on the act of 1819 by that of 1821, by which it was admitted that a ferry had been established according to the first act, and the grantee was authorized to remove it to another point because a sandbar had been formed in front of the landing. We therefore feel ourselves constrained to differ from the carefully prepared and able opinion of the Supreme Court of Illinois, found in the record, which holds the first grant to have been inoperative.

We come next to consider the act of 1821. When it was passed, Wiggins had land fronting on the river for nearly a mile, extending both above and below Illinois Town and lying between it and the river. It was all the land he then could desire for the purposes of his ferry and the end of his road. Indeed, it is doubtful whether, under the grant, Wiggins could have gone below his first purchased tract and been "near the Town of Illinois," because his land extended considerably below the town. As the act of 1821 recognized the fact that Wiggins had complied with his contract under the act of 1819, and had established a ferry on land that belonged to him, and that it was established "near the Town of Illinois," it is fair to presume that both parties to the contract, as modified and enlarged by the act of 1821, understood what land it was that Wiggins owned at that time, and the boundaries thereof, and also the extent of his interest, being two-sevenths of the tract.

The act of 1821 was treated by the bill and was relied on in argument as conferring a perpetual privilege on Wiggins, and on his assigns, to remove the ferry to any land that might belong to him or to them at the time of the removal, and furthermore that the right of removal was unrestricted as respects time, and could have been made at any time heretofore, or could be made hereafter.

That the act is somewhat obscure, in regard to the place to which the ferry could be removed, must be admitted, and in

seeking its true construction, several considerations present themselves. In the first place, that the act operated in the present tense, and was a mere enlargement of the privileges conferred by the act of 1819, and must be taken as a part of the first contract, cannot be denied; secondly, when we take into consideration the fact that Wiggins had a specific tract of land at that time, at the proper place -- that is to say, lying in front of Illinois Town and extending above and below it -- a reasonable conclusion is that some place on such tract was referred to by the act of 1821; and thirdly, as the act of 1819 reserved authority in the legislature to repeal so much of the law as secured to Wiggins an exclusive ferry right for two miles on the river front, such reservation could only mean that rival ferries might be established at discretion by the legislature. Nor can it be assumed with any claim to a plausible construction that the power of removal had no limitation of time or place, as this would confer a right to remove to the same landing with a newly established ferry, set up as a rival, and drive it away, and thus the public convenience would again be reduced to a single ferry. Now in view of these facts and consequences, and applying them to language of an ambiguous character, and seeking assistance from a settled rule of construction in case of doubt, and finding that rule of construction to be that when two constructions are equally open to the court, the one shall be adopted most favorable to the government, the consequence must be, on this construction, that Wiggins was confined to the tract of land partly owned by him when the act of 1821 was passed, and that when the ferry was removed to other land lower down the river, it was an act not within the contract nor protected by it. This disposes of the first and principal ground of relief sought by the bill.

Whether Wiggins or those claiming under him had the right after he had established his new ferry, under the act of 1821, to remove it to another place on the tract of land he then owned, and whether the State of Illinois may not authorize another ferry on the same tract of land, not interfering with the operations of the one established by Wiggins, are questions which the record does not bring before us, and upon which therefore we express no opinion.

A second ground of relief is relied on by the bill, and was most earnestly and ably urged in argument here, and which it is incumbent on us to dispose of also.

The first special prayer would seem to conclude an inquiry into any ground of interference by this Court, other than the

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question arising on the acts of 1819 and 1821, standing as a contract, claimed to have been violated by the act of 1839. But the bill has also a general prayer, and on this, as well as upon the special prayer, the Supreme Court of Illinois ordered

"That it be certified in this case that there was drawn in question the validity of the statute of the State of Illinois entitled 'An act to authorize St. Clair County to establish a ferry across the Mississippi River,' approved March 2, 1839, on the ground that it was repugnant to the Constitution of the United States, and that the decision of the court was in favor of the validity of said statute,"

from which certificate it is manifest that the act of 1839 was upheld against each state of facts set forth by the bill; and if it was apparently repugnant to the Constitution on either ground assumed, this Court has jurisdiction of the cause, and having jurisdiction, the plaintiffs in error were entitled to be heard and are entitled to our judgment on both grounds presented and relied on to reverse.

The bill sets forth that gross abuses were imposed on complainants by the act of 1839 and by the commissioners and their lessee under the act; that the said three hundred feet include a wider space and more land than is necessary or convenient for a road, and but a small portion of it has been used and appropriated by the said County of St. Clair to that purpose, leaving a strip on either side to be used by the said County of St. Clair and its lessees, for private property, for building lots, and other private purposes, and that that portion of the said three hundred feet which is not included in said road, and which is now used for private purposes or is left to be thus used, will yield an annual ground rent larger than the whole amount of the damages assessed as aforesaid for the whole of said three hundred feet, and furthermore that only the condemned land was valued, and no compensation

awarded or tendered for the ferry franchise and landing taken from complainants.

As the bill was demurred to, and the demurrer sustained in the state courts, and in this form the case comes before us, all charges of abuse and oppression on the part of the authorities of Illinois are admitted to the extent alleged, and the question presented here on these facts is whether this Court has power to redress the injuries complained of under the twenty-fifth section of the Judiciary Act of 1789.

The Constitution having declared that no state shall pass any law impairing the obligation of contracts, it becomes our duty to inquire whether the state law and the acts done under it violate a contract. If any contract was violated under the

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act of 1839, it must have been a grant to land vesting the fee simple title, and such title complainants exhibit. To the width of needful roads and ferry landings property can undoubtedly be taken for the purposes of such easements, and necessarily the state authorities must decide (as a general rule) how much land the public convenience requires. That the power may be abused no one can deny, and that it is abused when private property is taken not for public use but to be leased out to private occupants to the end of raising money is too plain for reasoning to make it more so. Such an act is mere evasion, under pretense of an authorized exercise of the eminent domain, and if it be an evasion, it is void, and may be redressed by an action at law like any other illegal trespass done under assumed authority -- as for instance a trespass by a younger grantee on land held by an elder patent depending for support on a state law of later date than the first grant. But it is not an invasion and illegal seizure of private property on pretense of exercising the right of eminent domain, and which act is an abuse claiming the sanction of a state law, that gives this Court jurisdiction; such law, and the acts done under it, are not "the violation of a contract" in the sense and meaning of the Constitution. It rests with state legislatures and state courts to protect their citizens from injustice and oppression of this description.

The framers of the Constitution never intended that the legislative and judicial powers of the general government should extend to municipal regulations necessary to the wellbeing and existence of the states. Were this Court to assume jurisdiction and reexamine and revise state court decisions on a doubtful construction that an interest in land held by patent was a contract, and the owner entitled to constitutional protection by our decision in case of abuse and trespass by an oppressive exercise of state authority, it would follow that all state laws, special and general, under whose sanction roads, ferries, and bridges are established would be subject to our supervision. A new source of jurisdiction would be opened of endless variety and extent, as on this assumption all such cases could be brought here for final adjudication and settlement; of necessity, we would be called on to adjudge of fairness and abuse to ascertain whether jurisdiction existed, and thus to decide the law and facts -- in short, to do that which state courts are constantly doing, in an exercise of jurisdiction over peculiarly local matters -- by which means a vast mass of municipal powers heretofore supposed to belong exclusively to state cognizance would be taken from the states and exercised by the general government

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through the instrumentality of this Court. That such a doctrine cannot be maintained here has in effect been decided in previous cases, and especially in that of [Charles River Bridge v. Warren Bridge](#), 11 Pet. 539, [36 U. S. 540](#) , where other cases are cited and reviewed.

For the reasons above stated, it is ordered that the judgment of the supreme court of Illinois be

Affirmed.

MR. JUSTICE Mc LEAN dissented.

ORDER

This cause came on to be heard on the transcript of the record from the Supreme Court of the State of Illinois and was argued by counsel. On consideration whereof, it is now here ordered, adjudged, and decreed by this Court, that the decree of the said supreme court in this cause be and the same is hereby affirmed with costs.

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