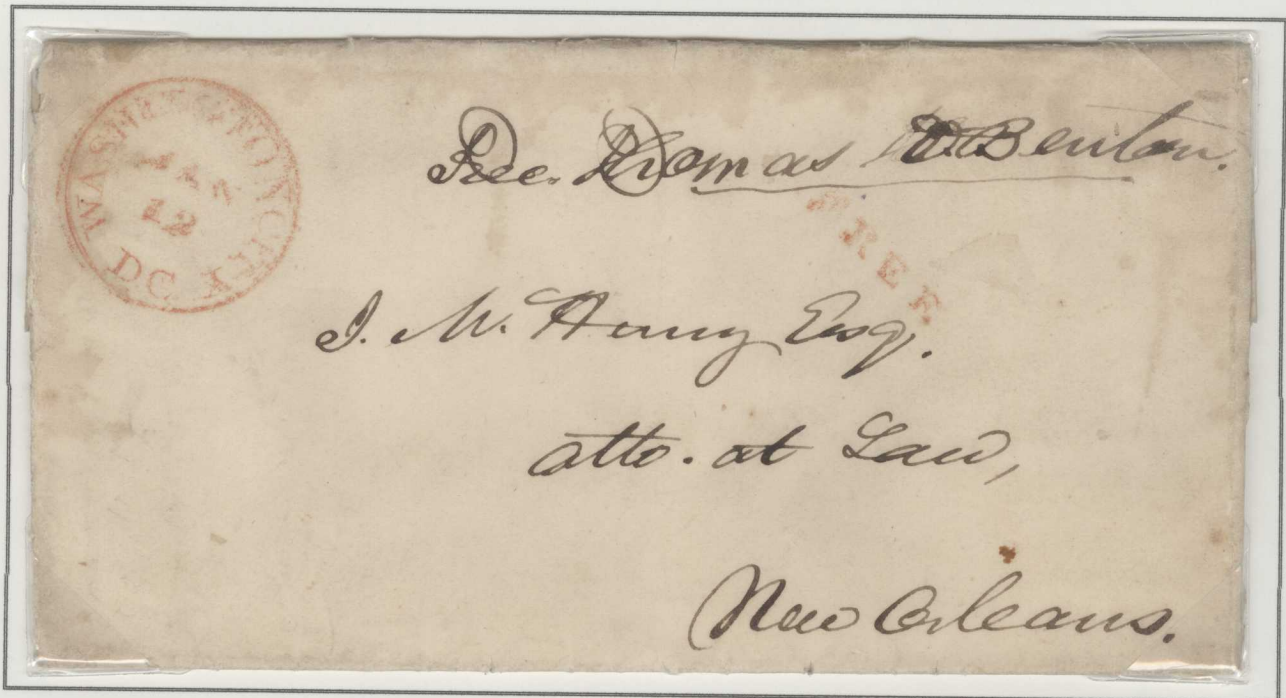


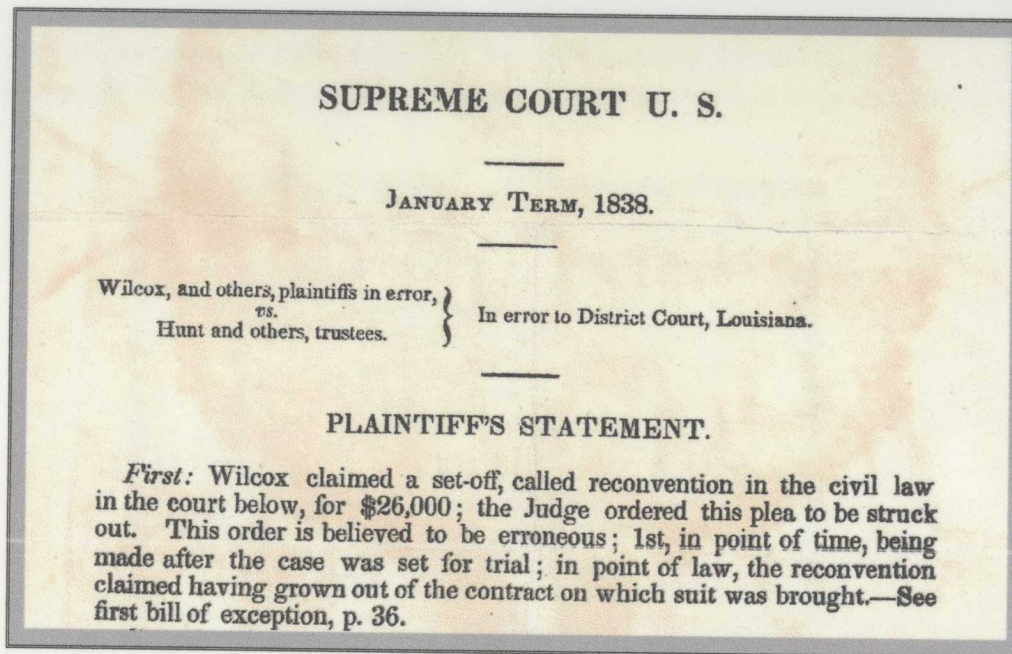
Thomas Hart Benton
United States Senator from Missouri
Legal Case before the U. S. Supreme Court ~ 1838



January 12, 1838 Washington City, D. C. To J. M. Henry Attorney at Law, New Orleans with red round handstamp and *Free* marked with manuscript *Free* by Thomas H. Benton

Letter contains a note from Senator Benton regarding a law suit.

Enclosed are the points six in number, on which I propose to argue the case. Several of them, and especially two last go to the merits. - B -



SUPREME COURT U. S.

JANUARY TERM, 1838.

Wilcox, and others, plaintiffs in error, }
vs. }
Hunt and others, trustees. } In error to District Court, Louisiana.

PLAINTIFF'S STATEMENT.

First: Wilcox claimed a set-off, called reconvention in the civil law in the court below, for \$26,000; the Judge ordered this plea to be struck out. This order is believed to be erroneous; 1st, in point of time, being made after the case was set for trial; in point of law, the reconvention claimed having grown out of the contract on which suit was brought.—See first bill of exception, p. 36.

Second: Plaintiff below was allowed to prove the execution of the sealed instrument, on which the action was brought, by evidence of the handwriting of the obligors, and that the signatures were theirs, there being two subscribing witnesses, whose inability or incapacity to testify was not shown, and whose handwritings were not proved. The seals not proved. All this believed to be error.—See second bill of exceptions, p. 37.

Third: The action was for the amounts of about seventy notes of hand, whereof fifteen were not endorsed, or assigned by the payees to any body, and twenty-eight were endorsed in full, and specially to several persons, not parties to the suit, and not by them endorsed in any way. Defendant below objected to these notes, but the court let them go in evidence to the jury. This believed to be error.—See third bill of exception, p. 37.

Fourth: Defendant below offered to prove a violation of the contracts sued on by the plaintiffs, prior to the institution of this suit, and to show by witnesses that the same had been dissolved, destroyed, and annulled, by the illegal conduct of the plaintiffs, by non-complying with the stipulations therein contained on their part, which proof the court refused to admit. This held to be error.—See fourth bill of exception, p. 38.

Fifth: Plaintiff in error objects to the jurisdiction of the court below, the creditors for whom the trustees sue not being sufficiently shown to be citizens of a different State from that in which the suit was brought.

Sixth: By the deed of trust on which the action is founded, the trustees were to collect, and distribute *pro rata* among the creditors, the proceeds of the notes endorsed to the trustees, by the firm of John Wilcox and company; and by the same deed, the notes given by John Wilcox, were to be passed to the creditors respectively, for their use and benefit; yet the trustees bring their action upon these last mentioned notes, seventy-four in number, and recover judgment. This is believed to be error, and that the trustees have no right, under the deed of trust, or otherwise, to collect these notes, and distribute their proceeds *pro rata* among the creditors.