

No. 13525

Supreme Court of Illinois

Wilson.

vs.

Myrick.

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division.

No. 142.

Wilson

75

Eddy

1861

Heppard

13525

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between John L. Wilson who sues for the use of Francis Fuller and a survivor of David Hammer

plaintiff, and Russell A. Eddy and Willard H. Myrick

defendants, it is said manifest error hath intervened, to the injury of the aforesaid plaintiff

as we are informed by him complainant and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgments thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Laton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 16th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.
J. B. Rice Deputy

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John L. Wilson for the use of

No.

vs.

Russell A. Eddy et al

WRIT OF ERROR.

FILED A. D. 186

Gleick

SUPREME COURT,

THIRD GRAND DIVISION, }
APRIL TERM, A. D. 1861. }

JOHN L. WILSON,

Who sues for the use of FRANCIS FULLER,
surviving partner of DAVID HAMMER, de-
ceased.

Plaintiff in Error,

vs.

WILLARD F. MYRICK ~~and~~

~~AND RUSSELL A. EDDY~~

Defendants in Error.

ABSTRACT OF RECORD.

— • • —

This was an action of DEBT brought in the name of John L. Wilson, Sheriff of Cook County, Illinois, for the use of Francis Fuller, the surviving partner of David Hammer, deceased, against Willard F. Myrick and Russell A. Eddy, on a special bail bond taken in a civil action.

The amended Declaration contains two counts.

§ **The First Count** alleges that the defendants on the 18th of September, 1857, by their writing obligatory, sealed with their seals, &c., ac-

execute; that afterwards and on the 4th day of June, 1860, said Sheriff returned said writ, &c., that the said Russell A. Eddy was not found in said county.

7 That the defendant Myrick has not paid and satisfied the said costs and condemnation money, nor any part thereof so recovered, &c., nor surrendered the body of said Eddy in execution, nor has said Eddy surrendered himself in execution, nor paid and satisfied the said costs and condemnation money nor any part thereof, but the same is wholly unpaid, whereby an action has accrued, &c.

The Second Count does not differ substantially from the first count, alleging, in addition to the averments in the first count, that the said action in the condition of said bond mentioned "having been continued from term to term from the said term held on the third Monday of November, 1857, until the said term holden on the first Monday in January, 1860," &c.

To which said Declaration the said Willard F. Myrick filed the following pleas :

14 **First Plea :** Defendant says that the said supposed writing obligatory is not his deed ; and of this he puts himself upon the country.

15 **Second Plea :** Defendant says *actio non*, because, he says, that he does not owe the said sum of money in the said Declaration mentioned, or any part thereof, in manner and form, &c., and concludes to the country, &c.

Third Plea : *Actio non*, because, he says, that no affidavit setting forth the nature and cause of the action, with the substantial or chief facts in relation thereto, was delivered to the Clerk of said Court in said action in which the said capias ad respondendum was issued, before the issuing of the same, &c., and concludes with a verification.

Fourth Plea : *Actio non*, because, he says, that there is no record

of any affidavit of the cause of action of the said David Hammer and Francis Fuller, or either of them, against the said Eddy, filed of record in said Circuit Court, and concludes with a verification.

15 **Fifth Plea:** *Actio non*, because, he says, that the affidavit upon which the capias ad respondendum was issued against the said Russell A. Eddy, upon which the said Russell A. Eddy was held to bail as alleged in the Declaration, was and is in the words and figures following, that is to say:

“STATE OF ILLINOIS—COOK COUNTY ss.:

16 “DAVID HAMMER, being duly sworn, deposes and says that one Russell A. Eddy, on or about the 14th day of September, A. D. 1857, at said county, unlawfully and tortiously converted to his own use about two hundred and fifty head of horned cattle, consisting of bulls, cows, steers, heifers and calves; also two horses, two saddles, and one wagon—the said goods and chattels then and there being the property of the affiant and one Francis Fuller; that the said chattels were then and there of the value of three thousand dollars; and affiant and said Fuller have, by reason of said unlawful and tortious conversion, sustained damages to the amount of three thousand dollars. Affiant further says that he and said Fuller have this day brought a suit in trover in the Cook County Circuit Court against said Eddy, for the damages sustained by them as aforesaid;

“That the benefit of whatever judgment may be obtained in said suit will be in danger unless the said Eddy be held to bail in said action or suit; and this affidavit is made that a capias ad respondendum may issue as the original process in said suit, in pursuance of the præcipe filed therein by the plaintiffs’ attorneys.

“DAVID HAMMER.

“Subscribed and sworn to before me, the undersigned Clerk of said Court, this 17th day of September, 1857.

“WM. L. CHURCH, Clerk.”

17 And said defendant Myrick avers that no other or different affidavit

than the said affidavit above copied was made or delivered to the Clerk of said Court upon which the said *capias ad respondendum* was issued. Concludes with a verification.

- 17 **Sixth Plea :** *Actio non*, because, he says, that the *capias ad respondendum* in the Declaration mentioned, at the time when, &c., was by the plaintiff placed in the hands of one Benjamin Hendricks, being then and there not a deputy of the said plaintiff nor having any authority by the law of the land to execute any writ or process issued out of said Court; and that the said Hendricks then and there did take upon himself to officiate as deputy of the said plaintiff as Sheriff of said County, without being lawfully authorized thereto; of all which premises the plaintiff and the said Hammer and Fuller then and there had notice; that said Hendricks &c. under color of said *capias ad respondendum* did unlawfully arrest and imprison said Eddy, and then and there unlawfully detained him in prison until, by the force and duress of imprisonment of him the said Eddy, and for ease and favor to be shown by the said Hendricks to said Eddy from his said imprisonment, and for his deliverance therefrom to be had and obtained, he (said Eddy) as principal, and defendant Myrick as surety and bail of said Eddy, made the said writing obligatory in said Declaration mentioned, and delivered the same to the said Hendricks as their deed. Concludes with a verification.
- 18

- 18 **Seventh Plea :** *Actio non*, because, he says, that on the 25th day of June, 1860, at said County, the said defendant Myrick did surrender said Eddy to the Circuit Court during the sitting thereof, and thereupon an entry was then and there made on the records of said Court stating such surrender and the commitment of the said Eddy to the custody of the Sheriff of said County of Cook; and the said Eddy was then and there committed to the jail of said County, there to remain until discharged by the due course of law; and thereupon the defendant Myrick did then and there give notice of such surrender to the firm of Gookins, Thomas & Roberts, attorneys at law, in said County, who were then and there the attorneys of said plaintiff and of said Fuller; and did also then and there pay all the costs which had accrued in this action — whereby, and by means of the premises, the said defendant Myrick became and was discharged from all liability as bail for the said Eddy in

said suit in which said capias ad respondendum was issued, as in said Declaration mentioned; and concludes with a verification.

19 **Eighth Plea :** *Actio non*, because, he says, that there was not, before the issuing of the said capias ad satisfaciendum in said Declaration mentioned, any execution issued upon the judgment in said Declaration mentioned, against the property of said Eddy, nor any affidavit filed with the Clerk of said Court that said Eddy had refused to surrender his estate, lands, tenements, goods and chattels for the satisfaction of any execution which had been issued against the property of said Eddy; and concludes with a verification.

20 **Ninth Plea :** *Actio non*, because, he says, that no suit or process whatever, whereupon the said Eddy could and ought to be arrested and held to bail, was sued and prosecuted out of the said Circuit Court by the said Hammer and Fuller in the said suit in the said condition mentioned. Concludes with a verification.

Tenth Plea : *Actio non*, because, he says, that there is not any record of the said supposed recovery, in the said Declaration mentioned, remaining in the said Circuit Court, in manner and form as alleged, &c. Concludes with a verification.

Eleventh Plea : *Actio non*, because, he says, that after the recovery of the said judgment in the said Declaration mentioned, and before the commencement of this suit, there was no ~~sue~~^{writ} of capias ad satisfaciendum duly sued out and prosecuted out of the said Circuit Court against the said Russell A. Eddy, upon the said judgment, and duly delivered to the Sheriff of said County and by him duly returned in the said Court, as according to law there ought to have been, &c. Concludes with a verification.

21 **The Plaintiff joined issue** to the first plea, and filed a general demurrer to each of the second, fifth, sixth, seventh, eighth and ninth
22 pleas. Defendant joined in demurrer.

22 **To the Third Plea**, the plaintiff replied : That an affidavit setting forth the nature and cause of the action, with the substantial and chief facts in relation thereto, was delivered to the Clerk of the said Court in said action in which the said *capias ad respondendum* was issued, before issuing of the same, and concluded to the country.

To the Fourth Plea, the plaintiff replied : That there was a record of an affidavit of the cause of action of said Hammer and Fuller against Eddy, filed of record in said Court ; and concluding with a *prout patet per recordum*.

24 **To the Tenth Plea**, the plaintiff replied : That there was a record of the said supposed recovery in the declaration mentioned, remaining in the said Circuit Court in manner and form alleged ; and concluded with a *prout patet per recordum*.

25 **To the Eleventh Plea**, the plaintiff replied : That after the recovery of the said judgment, as in the said Declaration mentioned, and before the commencement of this suit, there was a writ of *capias ad satisfaciendum* duly sued out and prosecuted out of the said Circuit Court and against the said Eddy upon the said judgment, and duly delivered to the Sheriff of said County and by him duly returned in the said Court according to law ; and concluded to the country.

To each of the replications to the third and fourth pleas, the defendant demurred specially, and assigned for causes of demurrer upon each of said demurrers, that each of said replications put in issue a matter of law for the jury to try, to-wit : whether there were such affidavits, setting forth the nature and cause of action, with the substantial and chief facts in relation thereto in the one case, and of the cause of action in the other, as were sufficient, instead of setting out the affidavits for the Court to pass upon their sufficiency. And the plaintiff joined in demurrer.

The defendants joined issue upon the replications to the tenth and eleventh pleas.

And the Court, having considered the said pleadings, made the following

Order and Decision therein, to wit:

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"This day again come the said parties, by their attorneys, whereupon all and singular the premises being seen and now fully understood: for that inasmuch as it appears to the Court that the amended Declaration of the said plaintiff in manner and form, and the matters therein contained, are sufficient in law for him to have and maintain his aforesaid action against the said defendant; therefore, it is ordered and considered by the Court, that the demurrer of the said plaintiff to the said pleas of the said defendant, by him pleaded, be carried back to and sustained as to the said amended Declaration. And the said plaintiff, electing to stand by his said Declaration, now excepts to the ruling and decision of the Court: therefore it is considered that the said plaintiff take nothing by his said writ, and that the said defendant have and recover of the said plaintiff his costs and charges by him about his defence in that behalf expended, and have execution therefor.

ERRORS ASSIGNED.

I.

The Court erred in deciding that the amended Declaration was insufficient in law.

II.

The Court ^{Erred} in carrying back the demurrers to the pleas, and sustaining said demurrers to the amended Declaration.

III.

The Court erred in giving judgment for the defendant Myrick, when, by law, judgment should have been given for the plaintiff.

IV.

The demurrers to the 2d, 5th, 6th, 7th, 8th and 9th pleas were carried back and sustained to the amended Declaration, whereas said demurrers should have been sustained to the said pleas.

GOOKINS, THOMAS & ROBERTS,
Attorneys for Plaintiffs in Error.

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Wilson
vs
Eddy

Abstract of
Record

Filed April 16, 1861
L. Leland
Clerk

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Plas, before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the third Monday, (being the ninth day) of February in the year of our Lord one thousand eight hundred and sixty one and of the Independence of the said United States the eighty-fifth

Present, Honorable George Manierre Judge of the 7th Judicial Circuit of the State of Illinois. }

Charles Haven States Attorney.

Anthony A. Hering Sheriff of Cook County.

Attest, William L. Church Clerk.

Be it remembered that heretofore to wit: on the Eighth day of June A. D. 1860. John L. Wilson who sued for the use of Francis Fuller survivor of David Hummer plaintiff by Messrs. Watkins Thomas and Robert his Attorney. sued out of the office of the clerk and under the seal of said Court. the Peoples writ of summons directed to the Sheriff of Cook County. to execute and clothed in the words and figures following to wit:

Summons.

State of Illinois }
Cook County } ss

The People of the State of Illinois to the Sheriff of said County. Greeting: We command you that you summon Russell A. Eddy and Willard T. Mayhew if they shall be found in your County, personally to be and appear before the circuit court of Cook

County, on the first day of the next term thereof, to be
holden at the Court House in Chicago, in said County,
on the third Monday of June inst. to answer unto
John L Wilson who sues for the use of Francis Fuller
survivor of David Hummel of a plea that they
render to the said plaintiff six thousand dollars
which they owe to and unjustly detain from him to
the damages of the said plaintiff as is said in the
sum of One thousand dollars. And have you then
here this writ, with an endorsement thereon in what
manner you shall have executed the same.

EP

Witness William L Church, Clerk of our
said Court, and the seal thereof, at Chicago
aforesaid this Eighth day of June A D 1860
Wm L Church Clerk

And afterwards, to wit: on the ninth day of June
A D 1860, said writ was returned into the Court afo-
- said, by said Sheriff endorsed in the words and
figures following, to wit:

Served by reading to the within
named Willard F. Myrick the ninth day of June
1860. R. A. Eddy not found in my County. fees -
service 50 mileage 15 Return 10 = 75 Pd by Puff atty

John Gray Sheriff

By D. J. Wood Deputy

And thereupon afterwards, to wit: on the seventh
day of July in the year last aforesaid there was
filed in the Court aforesaid a certain Declaration
which is in the words and figures following, to wit:

Declaration.

State of Illinois } In the Circuit Court of Cook
Cook County } County. Of the June Term 1860

John L. Wilson late Sheriff of the county of Cook who sues for the use of Francis Fuller survivor of David Hammer deceased plaintiff complains in this his amended Declaration of Willard A. Weyrick and Russell A. Eddy Defendants of a plea that they render unto him for the use aforesaid the sum of six thousand dollars, which they owe and unjustly detain from him.

For that whereas the said defendants heretofore, to wit: on the Eighteenth day of September Eighteen Hundred and fifty seven at the County aforesaid by their certain writing obligatory sealed with their seals and ~~has~~ shown to the Court here, the date whereof is the day and year aforesaid acknowledged themselves to be held and firmly bound unto the said plaintiff by the name and description of John L. Wilson Sheriff of the County of Cook and State of Illinois in the sum of six thousand dollars lawful money of the United States for the payment of which sum well and truly to be made to the said plaintiff Sheriff as aforesaid or his successors in office Executors administrators or assigns, they the said defendants thereby jointly and severally bound themselves their heirs Executors and administrators which said writing obligatory had then

and there a condition thereunder written and made a part thereof that whereas said David Hammer and Francis Fuller had then lately sued out of the circuit court of the County of Cook a certain writ of *Capias ad respondendum* in a certain plea of *Trover* against the said Russell W Eddy returnable to the then next term of the said Court to be holden at the Court House in the City of Chicago in said County on the third Monday of November then next and that if the said Russell W Eddy should be and appear at the said Court to be holden at Chicago aforesaid on the said third Monday of November then next and in case the said Defendant Willard W Myrick should not be received as bail in the said action should put in good and sufficient bail which should be received by the plaintiff (meaning the said Francis Fuller and David Hammer) or should be adjudged sufficient by the Court or the said defendant Willard W Myrick being accepted as bail should pay and satisfy the costs and condemnation money which might be rendered against the said Russell W Eddy in the plea aforesaid or surrender the body of ^{the said} Russell W Eddy in execution in case the said Russell W Eddy should not pay and satisfy the said costs and condemnation money or surrender himself in execution

5 when by law such surrender should be required then the said obligation to be void otherwise to remain in full force and effect.

And afterwards to wit: at a term of the said Circuit Court begun and held at the Court House in the City of Chicago in said County on the first Monday of January Eighteen Hundred and sixty the death of the said David Hammer since the commencement of the said action having been suggested on the record of the said action and the Cause of action surviving to the said Francis Fuller and the said action having proceeded at the suit of the said Fuller Fuller he the said Francis Fuller by the consideration and Judgment of the said Court recovered in the action aforesaid in the condition of the said writing obligatory mentioned against the said Russell A Eddy the sum of two thousand two hundred and fifty seven dollars and two cents for his damages and the further sum of four hundred and Eighteen dollars and seventy two cents for his costs about his suit in that behalf expended as by record thereof remaining in said Court appears which said Judgment Damages and Costs remains in full force and virtue wholly unsatisfied.

And afterwards to wit: on the fifth day of March A D 1860 the said Francis Fuller sued out of the office

of the clerk of the said Circuit Court upon the said
 Judgment his certain writ of *capias ad satisfaciendum*
 in the name of the People of the State of Illinois
 under the seal of said Court and tested by said Court
 directed to the Sheriff of said County whereby the
 said Sheriff was commanded that he take the said
 Russell A. Eddy if he should be found in said County
 and him safely keep so that he should have his
 body to satisfy the said Francis Fuller survivor of
 David Hammer in the sum of two thousand two
 hundred and fifty seven dollars and two cents which
 he said Francis Fuller then lately in said Circuit Court
 at a term thereof begun and held in the City of Chicago
 in said County on the first Monday of January then
 last past recovered against the said Russell A. Eddy
 for his damages, and the further sum of ~~two~~ ^{four} hundred
 and Eighteen Dollars and seventy two cents for the
 costs and charges of the said Francis Fuller about
 his suit in that behalf expended whereof the said
 Russell A. Eddy was convicted as appears therein of
 record in ninety days from the date thereof and that
 he should have then and there the said writ with
 an indorsement thereon in what manner he should
 have executed the same, which said writ was after-
 wards. As writ: on the 5th day of March A Disco
 and at least ten days before the return day thereof

of the clerk of the said Circuit Court upon the said
 Judgment his certain writ of *capias ad satisfaciendum*
 in the name of the People of the State of Illinois
 under the seal of said Court and tested by said Court
 directed to the Sheriff of said County whereby the
 said Sheriff was commanded that he take the said
 Russell A. Eddy if he should be found in said County
 and him safely keep so that he should have his
 body to satisfy the said Francis Fuller survivor of
 David Hammer in the sum of two thousand two
 hundred and fifty seven dollars and two cents which
 he said Francis Fuller then lately in said Circuit Court
 at a term thereof begun and held in the City of Chicago
 in said County on the first Monday of January then
 last past recovered against the said Russell A. Eddy
 for his damages, and the further sum of ~~two~~ ^{four} hundred
 and Eighteen Dollars and seventy two cents for the
 costs and charges of the said Francis Fuller about
 his suit in that behalf expended whereof the said
 Russell A. Eddy was convicted as appears therein of
 record in ninety days from the date thereof and that
 he should have then and there the said writ with
 an indorsement thereon in what manner he should
 have executed the same, which said writ was after-
 wards. As writ: on the 5th day of March A Disco
 and at least ten days before the return day thereof

7 delivered to the Sheriff of said County to be executed according to law. And afterwards. To wit: on the 4th day of June 1860 the said Sheriff returned the said writ into the said Court and in and by his said return endorsed thereon certified and returned that the said Russell & Eddy was not found in said County. - And the said plaintiff in fact says that the said defendant Willard F. Myrick has not paid and satisfied the said costs and condemnation money nor any part thereof so recovered and rendered against the said Russell & Eddy as aforesaid nor has the said defendant Willard F. Myrick surrendered the body of the said Russell & Eddy in execution nor has the said Russell & Eddy surrendered himself in execution nor has the said Russell & Eddy paid and satisfied the said costs and condemnation money nor any part thereof but the same remains in full force wholly unpaid and unsatisfied whereby an action has accrued to the said plaintiff for the use aforesaid to demand and have of and from the said defendants the said sum of six thousand dollars parcel of the said sum above demanded.

2^d Count.

And whereas also the said Defendants heretofore. to wit: on the Eighteenth day of September Eighteen Hundred and fifty seven at the County aforesaid by their certain other writing obligatory

sealed with their seals and now shown to the Court
 here the date whereof is the day and year aforesaid
 acknowledged themselves to be held and firmly bound
 unto the said plaintiff by the name and description
 of designation of John L Wilson Sheriff of the County
 of Cook and State of Illinois in the sum
 of six thousand Dollars lawful money of the
 United States for the payment of which sum will
 and truly and to be made to the said plaintiff
 Sheriff as aforesaid to his successors in office executors
 administrators or assigns. the said Defendants thereby
 jointly and severally bound themselves their heirs exec-
 utors and administrators, which said other writing
 obligatory had then and there a condition thereunder
 written and made to wit that whereas David
 Hammer and Francis Fuller had then lately sued
 out of the Circuit Court of the County of Cook a
 certain writ of capias ad respondendum in a certain
 plea of Trover against said Russell A Eddy return-
 able to the then next term of the said Court to be
 holden at the Court House in the City of Chicago
 in said County, on the third Monday of November
 then next and that if the said Russell A Eddy should
 be and appear at the said Court to be holden at
 Chicago aforesaid on the said third Monday of Novem-
 ber then next and in case the said defendant William

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9 9 1 0

9 *McMerrick* should not be received as bail in the said action should put in good and sufficient bail which should be received by the plaintiff (meaning the said David Hammer and Francis Miller) or should be adjudged sufficient by the court on the said defendant Willard *McMerrick* being accepted as bail should pay and satisfy the costs and condemnation money which might be rendered against the said Russell & Eddy in the plea aforesaid or surrender the body of the said Russell & Eddy in execution in case the said Russell & Eddy should not pay and ~~and~~ satisfy the said costs and condemnation money or surrender himself in execution when by law such surrender should be required then the said obligation to be void otherwise to remain in full force and effect.

And afterwards to wit: at a term of the said Circuit Court begun and held at the Court House in the City of Chicago, in said County, on the first Monday of January Eighteen hundred and sixty the said action having been continued from term to term from the term held on third Monday of November A D 1857 until the said term holden in the first Monday of January A D 1860. the death of the said David Hammer since the commencement of the said action being suggested on the record of the said action and the said action thereupon proceeding

at the suit of the said Francis Fuller the said Francis Fuller by the consideration and judgment of the said Court recovered in the action aforesaid in the condition of the said writing obligatory mentioned against the said Russell A Eddy the sum of two thousand two hundred and fifty seven dollars and two cents for his damages and the further sum of ~~four~~ hundred and Eighteen Dollars and seventy two cents for his costs about his suit in that behalf expended as by the record thereof remaining in said Court appears, which said judgment remains in full force and virtue wholly unsatisfied.

And afterwards to wit: on the fifth day of March A D 1860 the said Francis Fuller sued out of the office of the Clerk of the said Circuit Court upon the said judgment his certain writ of Capias ad satisfaciendum in the name of the People of the State of Illinois under the seal of said Court and tested by said Clerk directed to the Sheriff of said County whereby the said Sheriff was commanded that he take the said Russell A Eddy if he should be found in said County and him safely keep so that he should have this body to satisfy the said Francis Fuller survivor of the said David Hammer in the sum of two thousand two hundred and fifty seven Dollars and two cents which he the

11 said Francis Fuller then lately in said Circuit court at a term thereof begun and held in the city of Chicago in said County on the first Monday of January then last passed recovered against the said Russell A Eddy for his damages and the further sum of Four Hundred and Eighteen dollars and seventy two cents for the costs and charges of the said Francis Fuller about his suit in that behalf expended whereof the said Russell A Eddy was convicted as appears therein of record in ninety days from the date thereof and that he should have then and there the said writ with an endorsement thereon in what manner he should have executed the same which said writ was afterwards and at least ten days before the return day before the return day thereof to wit: on the fifth day of March A D 1860 delivered to the Sheriff of said County to be executed according to law.

And afterwards to wit: on the fourth day of June A D 1860 the said ~~Sherriff~~^{Sherriff} returned the said writ into said Court and in and by his said return indorsed thereon certified and returned that the said Russell A Eddy was not found in said County. And the said plaintiff in fact says that the said defendant Willard Myrick has not paid and satisfied the said costs and Condemnation money nor any part thereof so recovered and rendered against the said Russell A Eddy.

as aforesaid nor has the said defendant Willard A Myrick surrendered the body of the said Russell A Eddy in execution nor has the said Russell A Eddy surrendered himself in execution. nor has the said Russell A Eddy paid and satisfied the cost and condemnation money nor any part thereof but the same remains in full force wholly unpaid and unsatisfied whereby an action has accrued to the said plaintiff for the use of the said Francis Fuller as aforesaid to demand and have of and from the said defendants the said sum of six thousand dollars other parcel of the said sum above demanded. Yet the said Defendants have not paid to said plaintiff nor to said Francis Fuller the said sum of six thousand dollars above demanded nor any part thereof but have neglected and refused so to do and still neglect and refuse. To the damage of the said plaintiff of One thousand dollars and therefore he brings his bill

Gookins. Thomas & Roberts Atty for Plff

The following is a copy of the Instrument sued on viz

"Know all men by these presents, that we
"Russell A Eddy and Willard A Myrick of the
"County of Cook and State of Illinois are held And

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firmly bound unto John L. Wilson Sheriff of Cook County in the State of Illinois in the sum of six thousand dollars lawful money of the United States for the payment of which sum well and truly to be made to the said John L. Wilson Sheriff as aforesaid or his successors in office executors and administrators or assigns we hereby jointly and severally bind ourselves our heirs executors and administrators,

Witness our hands and seals this Eighteenth day of September Eighteen hundred and fifty seven.

The condition of this obligation is such that whereas David Hammer and Francis Fuller have lately sued out of the Circuit Court of the County of Cook a certain writ of *capias ad respondendum* in a certain plea of *Trover* against said Russell A Eddy ^{to the next term} returnable of the said Court to be holden at the Court House in the City of Chicago in said County on the third Monday of November next. Now if the said Russell A Eddy shall be and appear at the said Court to be holden at Chicago aforesaid on the said third Monday of November next and in case the said Phyllard M. Myrick shall not be received as bail in the said action shall put in good and sufficient bail which shall be received by the plaintiff or shall be ^{adjudged} sufficient by the Court or the said Phyllard M. Myrick being accepted as bail shall

pay and satisfy the costs and condemnation money which may be rendered against the said Russell A. Eddy in the plea ~~afforded~~ or surrenders the body of the said Russell A. Eddy in execution in case the said Russell A. Eddy shall not pay and satisfy the said costs and condemnation money or surrender himself in execution, when by law such surrender is required, then this obligation to be void otherwise to remain in full force and effect.

In presence of

R. Hendrick

R. A. Eddy

W. F. Myrick

And afterwards to wit: on the 4th day of September A.D. 1860 said defendant Willard F. Myrick impleaded with Russell A. Eddy by Van Buren and Gary his attorney filed in said Court his Plea, which is in the words and figures following. to wit:

Plea

Willard F. Myrick impleaded
with Russell A. Eddy
at

John L. Nelson who sues for the use of

In the Circuit Court
of Cook County of the
September Term A.D. 1860

And the said defendant Willard F. Myrick by Van Buren and Gary, his attorney comes and defends the wrong and injury when so and says that the said ^{supposed} writing obligatory is not his deed

- 15 and of this he puts himself upon the country &c.
- 2 And for a further plea in this behalf the said defendant Weyrick says actio non &c. because he says that he does not owe the said sum of money in the said declaration mentioned or any part thereof in manner and form as the said plaintiff hath above thereof complained against him and of this he puts himself upon the country &c.
- 3 And for a further plea in this behalf the said defendant Weyrick says actio non &c. because he says that no affidavit setting forth the nature & cause of the action with the substantial or chief facts in relation thereto was delivered to the clerk of said Court in said action in which the said capias ad respondendum was issued before the issuing of the same & this the said defendant Weyrick is ready to verify - wherefore he prays Judgment &c.
- 4 And for a further plea in this behalf the said defendant Weyrick says actio non &c. because he says that there is no record of any affidavit of the cause of action of of the said David Hammer & Francis Fuller or either of them against the said Russell & Eddy) of filed of record in the said Circuit Court. in this the said defendant Weyrick is ready to verify. wherefore he prays Judgment &c.
- 5 And for a further plea in this behalf the said

16 defendant Myrick says action non re. because he says
that the affidavit upon which the ^{le = not} capias ad responden-
dam was issued against the said Russell & Eddy
upon which the said Russell & Eddy was held to
bail as alleged in the said declaration was & is in
the words and figures following, that is to say.

State of Illinois

Cook County } David Hammer being duly sworn
deposes and says that one Russell & Eddy on or about the
14th day of September A D 1857 at said County unlaw-
fully and tortiously converted to his own use about
two hundred head of horn cattle consisting of Bulls
Cows. Steers. Heifers and calves also two Horses two
Saddles and one Wagon the said goods and chattles then
and there being the property of the affiant and one
Francis Fuller, that the said Chattles. were then & there
of the value of three thousand Dollars and affiant and
said Fuller have by reason of said unlawful and
tortious conversion sustained damages to the amount
of three thousand dollars. Affiant further says that
he and said Fuller have this day brought a suit
in Proem in the Cook County Circuit Court against
said Eddy for the damages sustained by them as
aforesaid that the benefit of whatever judgment may
be obtained in said suit will be in danger unless
the said Eddy be held to bail in said action or suit.

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and this affidavit is made that a *capias ad respondendum* may issue as the original process in said suit in pursuance of the precept filed therein by plaintiffs Attorney

Subscribed and sworn to before me David Hammer
the undersigned Clerk of said Court
this 17 day of September A D 1857
W. L. Church Clerk

And said defendant
Weyrick avers that no other or different affidavit than
the said affidavit above copied was made or delivered
to the clerk of said Court upon which the said *capias*
ad respondendum was issued and this the said defen-
dant Weyrick is ready to verify - wherefore he prays
Judgment &c.

And for a further plea in this behalf the said
defendant Weyrick says *actio non est* because he says
that the said *capias ad respondendum* in ^{said} declaration men-
tioned at the said time when &c. to wit: at said County
was by the said plaintiff placed in the hands of one
Benjamin Hendricks to be executed. He the said Hendricks
being then and there not a deputy of the said plaintiff
not having any authority by the law of the land to
execute any writ or process issued out of said Court,
and that the said Hendricks then and there did take
upon himself to officiate as deputy of the said plaintiff

as Sheriff of said County without being lawfully authorized of all thereof all which premises the said plaintiff and the said Hammer^{And} Fuller in said declaration mentioned then and there had notice and that the said Hendricks then and there under color of said Capias ad respondendum did unlawfully arrest and imprison the said Russell & Eddy and then and there unlawfully detained him the said Russell & Eddy in prison until by the force and duress of imprisonment of him the said Russell & Eddy and for ease and favor to be shown by the said Hendricks to the said Russell & Eddy from his said imprisonment^{And} for his deliverance therefrom to be had and obtained he the said Russell & Eddy as principal and the said defendant Weyrick as surety and bail of the said Russell & Eddy made the said writing obligatory in said declaration mentioned and delivered the same to the said Hendricks as their deed - and this the said defendant is ready to verify wherefore he prays Judgment &c.

7 And for a further plea in this behalf the said defendant Weyrick says actio non &c. because he says that on the 25th day of June A D 1860 at said County he the said defendant Weyrick did surrender the said Russell & Eddy to the ^{said} Circuit Court during the sitting thereof and thereupon an entry

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was then and there made on the records of said court stating such surrender and the commitment of the said Russell A Eddy to the custody of the Sheriff of said County of Cook and the said Russell A Eddy was then and there committed to the jail of said County there to remain until discharged by due course of law and thereupon the said defendant Weyrick did then and there give notice of such surrender to the firm of Hookins Thomas & Roberts Attorneys at law in said County who were then and there the attorneys of the said Plaintiff and of the said Francis Fuller and did also then and there pay all the costs which had accrued in this action whereby and by means of the premises the said defendant Weyrick became and was discharged from all liability as bail for the said Russell A Eddy in the said suit in which the said Capias ad respondendum was issued as in said declaration mentioned - and this the said defendant Weyrick is ready to verify - wherefore he prays Judgment &c.

8

And for a further plea in this behalf the said defendant Weyrick says that there was not before the issuing of the said Capias ad respondendum in the declaration mentioned any execution issued upon the judgment in said declaration mentioned against the property of the said Russell A Eddy nor any affidavit

filed with the Clerk of said Court that the said Russell A Eddy had refused to surrender his estate lands tenants goods or Chattles for the satisfaction of any execution which had been issued against the property of the said Russell A Eddy and this the said defendant Weyrick is ready to verify - wherefore he prays Judgment &c.

9

And for a further plea in this behalf the said defendant Weyrick says actio non &c. because he says that no writ or process whatever whereupon the said Russell A. Eddy could and might be arrested and held to bail was sued and prosecuted out of the said Circuit Court by the said Hammer & Fuller in the said suit in the said condition mentioned and this the said defendant Weyrick is ready to verify - wherefore he prays Judgment &c.

10

And for a further plea in this behalf the said defendant Weyrick says actio non &c. because he says that there is ~~nothing~~ any record of the said supposed recovery in the said declaration mentioned remaining in the said Circuit Court in manner and form as the said plaintiff above hath alledged. and this he is ready to verify - wherefore he prays Judgment &c.

11

And for a further plea in this behalf the said defendant Weyrick says actio non &c. because he says that after the recovery of the judgment as in the

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said declaration mentioned and before the commencement of this suit there was no writ of ^{subpoena} ~~subpoena~~ ^{ad testificandum} ~~ad testificandum~~ duly sued and prosecuted out of the said Circuit Court against the said Russell & Eddy upon the said Judgment until said duly delivered to the Sheriff of said County & by him duly returned in the said Court as according to law there ought to have been, and this he is ready to verify - wherefore he prays Judgment &c.

Van Buren & Fary

Attys for Meyrick

And thereupon afterwards, to wit on the fifth day of December A D 1860 said plaintiff by his aforesaid Attorneys filed in said Court his certain Demurrers and Replications to the defendants Pleas, which said Demurrers & Replications, are in the words and figures following, to wit:

Demurrers and Replications

State of Illinois } In the Circuit Court of Cook
Cook County } County of the September Term 1860
John L Wilson who sues for the
use of Francis Fuller sum &c

Willard F. Meyrick and Russell & Eddy

And now comes the said plaintiff John L Wilson by Cookins Thomas & Roberts his attorneys and as ^{to} the Plea of the said defendant

Willard & Meyrick by him first above pleaded and where-
of he has put himself upon the country does the
like &c.

And the said plaintiff as to the said Plea
of said defendant William F. Meyrick secondly above
pleaded says precludi non. because he says that the
same and the matters and things therein contained
are not sufficient in law to bar the said plaintiff
from having and maintaining his said action wherefore
he prays judgment &c.

Deft joins in Demurrer

And the said plaintiff as to the said Plea of
the said defendants Willard & Meyrick ^{thirdly} ~~and fourthly~~
above pleaded says precludi non. because he says
that an affidavit setting forth the nature and
cause of the action with the substantial or chief
facts in relation thereto was delivered to the clerk of
said Court in said action in which the said copies
ad respondendum was issued before the issuing of the
same and of this the said plaintiff put himself upon
the country.

And the said plaintiff as to the said Plea of the
said defendant Willard & Meyrick by him fourthly
above pleaded says precludi non because he says
that there is a record of an affidavit of the cause of
action of the said David Hammer & Francis Fuller

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against the said Russell & Eddy filed of record in the said circuit court and this the said plaintiff is ready to verify by the said record and he prays that the said record may be seen and inspected by the court here and for Judgment &c.

5

And the said plaintiff as to the said Plea of the said defendant Willard & Myrick by him fifthly above pleaded says precludi non. because he says that the said plea and the matters and things therein set forth are insufficient in law to bar the said plaintiff from having and maintaining his aforesaid action. wherefore he prays Judgment &c.

Deft joins in Demurrer

6

And the said plaintiff ^{as to the} ~~after~~ ^{Plea} of the said defendant Willard & Myrick sixthly above pleaded says precludi non. because he says that the said Plea and the matters and things therein contained are insufficient in law to bar the said plaintiff from having and maintaining his said action whereupon he prays Judgment &c.

Deft joins in Demurrer

7

And the said plaintiff as to the of the ^{Plea} said defendant Willard & Myrick seventhly above pleaded says precludi non. because he says that the said Pleas and the matters and things therein contained are

insufficient in law to bar the said plaintiff's action and this he is ready to verify - wherefore he prays Judgment &c. Deft joins in Demurrer

9 And the said plaintiff as to the plea of the said defendant Willard & Myrick Eighthly above pleaded says precludi non. because he says that the said Plea and the matters and things therein contained are not sufficient in law to bar the said plaintiff from having and maintaining his said action and this he is ready to verify - wherefore he prays Judgment &c. Deft joins in Demurrer

And the said plaintiff as to the said plea of the said defendant Willard & Myrick ninthly above pleaded says precludi non. because he says that the said Plea and the matters and things therein contained are insufficient in law to bar the said plaintiff's action, and this he is ready to verify - wherefore he prays Judgment &c.

Deft joins in Demurrer
And the said plaintiff as to the said plea of the said defendant Willard & Myrick tenthly above pleaded says. precludi non. because he says ^{that} there is a record of the said recovery in the said declaration mentioned remaining in the said Circuit Court and thus the said plaintiff is ready to verify by the said record and he prays that the record may be

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seen and inspected by the Court here and per Judge &c
 And the said Plaintiff as to the plea of the
 said defendant Willard & Mayrick Eleventh above
 pleaded says precludi non. because he says that
 after the recovery of the judgment as in the said
 declaration mentioned and before the commence-
 ment of this suit there was a writ of Capias
 ad respondendum duly sued out and prosecuted
 out of the said Circuit Court against the said
 Russell & Eddy upon the said Judgment and
 duly delivered to the Sheriff of said County and
 by him duly returned in the said Court as according
 to law there ought to have been. and of this
 he the said Plaintiff puts himself upon the
 Country &c
 Cookins. Thomas^d & Roberts
 Atty for Plff

And afterwards. to wit: at the November term of said Court.
 to wit: on the seventh day of December A D 1860. the
 following among other proceedings in said Court. were had
 and entered of record. to wit:

John L Wilson who sues for the
 use of Francis Miller survivor
 of David Hammer

D. H.

Russell & Eddy^d Willard & Mayrick

Thirday comes the parties by

2864
 19535

Attorneys and on motion of plaintiff no objection being made thereto. It is ordered that defendants be and they hereby are ruled to reply to plaintiffs replication filed herein instanter. And the Court having heard counsel as well in support of the demurrer of the plaintiff to the 2^d 5th 6th 7th 8th & 9th Pleas of the defendants herein pleaded, as in opposition thereto, and not being sufficiently advised in the premises, takes said demurrer under advisement.

And afterwards, to wit: at the February term of said Court, to wit: on the fifteenth day of March A.D. 1861 the following among others proceedings in said Court were had and entered of record therein, to wit:

John L Wilson who sues for the
use of Francis Fuller survivor
of David Hamner

Debt

vs

Russell A Eddy^{2d} Willard & Myrick

19535

This day again come the said parties by their attorneys whereupon all and singular the premises being seen and now fully understood for that in as much, that it appears to the Court that the amended declaration of the said plaintiff in manner and form and the matters and things therein contained ~~on~~ are insufficient in law for him to have and maintain his aforesaid action

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against the said defendants, therefore it is ordered and considered by the Court that the demurrer of the said plaintiff to the said Pleas of the said defendants by them pleaded be carried back to, and sustained as to the said amended declaration and the said plaintiff electing to stand by his said declaration, now except to the ruling and decision of the Court,

Therefore it is considered that the said plaintiff take nothing by his said writ and declaration and that the said defendants have and recover of the said plaintiff his costs and charges by him about his defence in that behalf expended and have execution therefor.

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the writ amended declaration Pleas demurrers replications and proceedings had & entered of record in a certain cause lately pending in said Court on the Common law side thereof, wherein John L. Wilson who sues for the use &c. was plaintiff and Willard P. Meyrick was et al was Defendants.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court at Chicago of this
16 day of March

A. D. 1861

Wm. L. Church Clerk.

142
John L. Wilson
etal vs 142

Russell A. Eddy

Transcript of
Record of Circuit
Court of Cook Co.

Filed March 16, 1861
L. Leland
Clerk

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against the said defendants, therefore it is ordered and considered by the Court that the demurrer of the said plaintiff to the said Pleas of the said defendants by them pleaded be carried back to, and sustained as to the said amended declaration and the said plaintiff electing to stand by his said declaration, now except to the ruling and decision of the Court,

Therefore it is considered that the said plaintiff take nothing by his said writ and declaration and that the said defendants have and recover of the said plaintiff his costs and charges by him about his defence in that behalf expended and have execution therefor.

I, WILLIAM L. CHURCH, Clerk of the Circuit Court of Cook County, in the State aforesaid, do hereby certify the above and foregoing, to be a true, perfect and complete copy of the writ amended declaration Pleas, demurrers, replications and proceedings had & entered of record in a certain cause lately pending in said Court on the Common law side thereof, wherein John L. Wilson who sues for the use &c. was plaintiff and Willard A. Myrick & Co. & al. was Defendants.

In Witness Whereof, I have hereunto set my hand, and affixed the Seal of said Court at Chicago this
16 day of March

A. D. 1861

Wm. L. Church Clerk.