

14466

No. _____

Supreme Court of Illinois

Herrington ~~et al~~

vs.

Quimby et al

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 38

Herring
vs.
Quimby

1863

14466

Chicago Nov 16 1861.

Clerk of Supreme Court
Ottawa:

Enclosed we send you
the records and bonds for supersedeas in
the Herring case, which were sent to
you some weeks since with the request
that you hand them to Judge Paton.

At the conclusion of the record is an order
of Judge Paton for a supersedeas; will
you therefore issue writ of error & supersedeas
immediately. We enclose you fees \$5.⁰⁰
in former letter.

Yours

K. King & Kales

46 Herring 38

Sumby 3

Recipe

Filed Nov. 19. 1861
L. Leland
Clerk

Know all men by these presents that we James W. Herring and Edmund Aiken are held and firmly bound unto Benjamin F. Quincy and Joseph H. Low in the sum of Fifteen Hundred dollars of lawful money of the United States for the payment whereof well and truly to be made we hereby jointly and severally bind ourselves and our respective heirs executors administrators and assigns firmly by these presents. Witness our hands and seals this 23rd day of October AD 1861.

The condition of the foregoing obligation is such that whereas at the June Term 1861 of the Circuit Court of Cook County, holden at the Court house in the City of Chicago, County of Cook and State of Illinois the said Benjamin F. Quincy and Joseph H. Low by the judgment of said Court recovered a certain judgment for the sum of One Thousand dollars and damages, beside their costs in that behalf, in a plea of Trespass on the case; And whereas the said James W. Herring is about to sue out a writ of error from the Supreme Court of the State of Illinois, on said judgment and the record and proceedings therein, And whereas he is desiring that said writ of error when sued out should operate as a supersedeas in said suit and upon the judgment therein recovered as aforesaid,

Now therefore if the said James W. Herring shall pay the said judgment and all costs interest and

damages, in case the said judgment shall be affirmed; And in case the said James W. Herring shall duly and faithfully prosecute said writ of error, then this obligation shall be null and void; otherwise the same shall remain in full force and effect.

James W. Herring *and*
E. Aiken *and*

State of Illinois
Cook County, Ill:

City of Chicago, ^{of said County} Edmund Aiken, being first duly sworn says he is the surety named in the foregoing obligation that he is worth more than ~~fifteen thousand~~ ^{five thousand} dollars and up to and above all his debts and liabilities; that he is a free-holder and owns in his own right unincumbered real estate ~~situate in the State of Illinois~~ of more than the value of fifteen hundred dollars.

Subscribed and sworn to before me
this 2nd day of ~~October~~ ^{November} 1861

Norman Williams Jr.

E. Aiken

Notary Public

16
38
Supreme Court of Illinois

James W. Herring

Benjamin D. Herring
et al

Bond for appearance.

Filed November 17th 1861
L. L. L. Clerk

King & Kaas
Attys for Plffs in Error

SUPREME COURT OF ILLINOIS.

JAMES W. HERRING, Plff. in Error, }
vs. } *Error to the Circuit Court*
BENJAMIN F. QUIMBY and JOSEPH } *of Cook County.*
H. LOW, Defts. in Error.

Abstract of Record.

Rec. p. 1 This was an action on the case brought by the defendants in error against the plaintiff, to the September term, 1860, of the Circuit Court of Cook County.

2 Summons bearing teste the 12th day of July, 1860, in the usual form, was sued out in said action. This writ was afterwards, and on the 5th day of October, 1860, returned into court by the sheriff, with his
3 endorsement that the defendant was not found.

3, 4, 5, 6 Afterwards, to wit, on the 5th day of October, 1860, the defendants in error, by their attorney, filed their declaration in said cause. The declaration contains two counts, one in case, and the other in trover, for taking and converting, &c., certain goods and chattels of Quimby and Low, to wit, a wooden and frame building and its fixtures and appurtenances, placed and standing upon a certain lot in Chicago.

7 Afterwards, at the January term, 1861, of the court, the case was continued, with order for *alias* process of summons to issue. And afterwards, on the 17th day of May, 1861, an *alias* summons was issued in the usual form, directed to the sheriff of Cook county, and returnable the 4th Monday of May then next.

8 Afterwards, and on the 6th day of July, 1861, said *alias* writ was returned into the court aforesaid, with the return of the said sheriff as follows:

"Served, by reading to the within named defendant, the 17th day of May, 1861.

ANTHONY C. HESING, Sheriff.
By JOHN A. NELSON, Deputy."

Afterwards, to wit, at the June term of said court, to wit, on the 6th day of July, the said court made an order in said cause, setting forth that due personal service of summons had been had on said Herring, that he was called in open court, and came not, nor any one for him, but therein made default, which, on motion, was then ordered to be taken and entered of record, and that therefore said plaintiffs ought to have and recover of said defendant their damages therein sustained. And thereupon it was ordered that a jury come to assess said plaintiffs' damages therein, thereafter.

And afterwards, on the 11th day of July, 1861, a jury was empanelled, and after hearing evidence and the instructions of the court, retired, and found the defendant guilty, and assessed the plaintiffs' damages at one thousand dollars.

And the court thereupon rendered judgment against said Herring therefor, together with costs.

ERRORS ASSIGNED.

1. That said Circuit Court erred in ordering the default of said Herring to be taken and entered against him.
2. That said court erred in rendering said judgment against said Herring.
3. That said Circuit Court erred in not rendering judgment in favor of said Herring.
4. That said Circuit Court erred in rendering its said judgment against said Herring, in this, that said Herring was then and there entitled to a judgment in his favor, as in case of a non-suit; and said Circuit Court should then and there have rendered judgment in his favor and against said Quimby and Low accordingly.
5. That said judgment is in other respects informal and erroneous.

KING & KALES,
Attorneys for Plaintiff in Error.

STATEMENT OF THE CASE.

This suit was commenced by a summons made returnable to the September term, 1860, of the Circuit Court of Cook County; but the declaration was not filed therein till the 5th day of October, 1860, only three days prior to the commencement of the October term of said court. Several months after the declaration was filed, the plaintiff in error was served with a *pluries* summons in said cause, and on his failing to appear in court to defend the suit, his default was entered, and judgment rendered against him. The plaintiff in error now insists, that inasmuch as the declaration was not filed ten days before the commencement of the October term, 1860, that the court, instead of rendering a judgment against him, should have rendered a judgment in his favor, as in case of a non-suit.

Supreme Court

James McKim

Benj. F. Quincy
vs

Abstract & Points.

Filed April 23, 1862

L. Leland

Clerk

King & Kates
Plffs. Attys

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 judgment of a plea which was in the Circuit Court of Cook County, before the Judge thereof, between Benjamin F. Quincy and Joseph A. Low

plaintiffs and JAMES W. HERRING

defendant....., it is said manifest error hath intervened, to the injury of the aforesaid defendant

as we are informed by his 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 judgment 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. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this nineteenth day of November in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. L. Lind

Clerk of the Supreme Court.
J. R. His Deputy

46 Nov 38 105

Nov

James W. Herring

No.

vs.

Benjamin F. Burnby et al.

WRIT OF ERROR.

This writ of error is made
a supersedeas & as such
shall be obeyed by all
concerned

L. Leland Clerk
by J. B. Rice Deputy

FILED November 19th A. D. 1861

L. Leland
by J. B. Rice Deputy Clerk

SUPREME COURT OF ILLINOIS.

JAMES W. HERRING, Plff. in Error,	} <i>Error to the Circuit Court of Cook County.</i>
vs.	
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ANTHONY C. HESING, Sheriff.

By JOHN A. NELSON, Deputy.”

Afterwards, to wit, at the June term of said court, to wit, on the 6th day of July, the said court made an order in said cause, setting forth that due personal service of summons had been had on said Herring, that he was called in open court, and came not, nor any one for him, but therein made default, which, on motion, was then ordered to be taken and entered of record, and that therefore said plaintiffs ought to have and recover of said defendant their damages therein sustained. And thereupon it was ordered that a jury come to assess said plaintiffs' damages therein, thereafter.

And afterwards, on the 11th day of July, 1861, a jury was empanelled, and after hearing evidence and the instructions of the court, retired, and found the defendant guilty, and assessed the plaintiffs' damages at one thousand dollars.

And the court thereupon rendered judgment against said Herring therefor, together with costs.

ERRORS ASSIGNED.

1. That said Circuit Court erred in ordering the default of said Herring to be taken and entered against him.

2. That said court erred in rendering said judgment against said Herring.

3. That said Circuit Court erred in not rendering judgment in favor of said Herring.

4. That said Circuit Court erred in rendering its said judgment against said Herring, in this, that said Herring was then and there entitled to a judgment in his favor, as in case of a non-suit; and said Circuit Court should then and there have rendered judgment in his favor and against said Quimby and Low accordingly.

5. That said judgment is in other respects informal and erroneous.

KING & KALES,
Attorneys for Plaintiff in Error.

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46 105-38

Supreme Court

James W. Haring

(1)

Bruf & Quincy
_____ & Co

Abstracts & Prints

Filed Apr. 23. 1862

L. L. Loomis
Clerk

King & Kales
Plffs Atty

SUPREME COURT OF ILLINOIS.

JAMES W. HERRING, Plff. in Error, }
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102
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46 105 38

Supreme Court

James W. Herring

v

Benj. F. Quinsley
et al

Abstract & Points

Filed A/s. 23. 1842.

L Seland

Clerk

King & Kales
Plffs Attys

~~Herring~~ ~~opinion of the Court delivered by~~
~~At~~ delivered the opinion of the Court.
~~Secondly~~ Mr. Chief-Justice Bates,

~~Case of~~. This action was commenced to the September Term, 1860. The declaration was filed but three days before the October term which was the next succeeding term. The first summons was returned in October not served. The cause was continued from term to term, till the 6th of July, which was in the June term, 1861, when a default was taken. In the ~~mean~~ ^{mean} time, ~~on the~~ ~~17th of May~~ an alias summons was issued, returnable to the May term, which ~~on the same day~~ was served on the defendant. The complaint is, that the Court should have nonsuited the plaintiff instead of defaulting the defendant. This is the statute relied upon: "If the plaintiff shall not file his declaration, together with a copy of the instrument of writing or account on which the action is brought, in case the same be brought on a written instrument or account, ten days before the Court at which the Summons or copias is made returnable, the Court, on motion of the defendant, shall continue the cause on

the cost of the plaintiff, unless it shall appear that the suit was commenced within ten days of the sitting of the court; in which case the cause shall be continued without cost, unless the parties shall agree to have a trial. And if no declaration shall be filed ten days before the second term of the court, the defendant shall be entitled to a judgment as in case of non suit. ^{the plaintiff in large} ~~the plaintiff in large~~ ^{relies upon the last clause of the statute to show that the court should} ^{those} ~~non-suit~~ the plaintiff, instead of defaulting the defendant.

In Collins v. Tuttle, 24 Ill., 623, we have already decided, that under the first member of the statute quoted, the defendant need not appear in court and make a motion for a continuance of the cause, but that if he does not appear it is the duty of the court to continue it under the general order, but without giving costs to the defendant. This would seem to reduce the inquiry to the question, what event is referred to, after which the second term shall occur, ten days before which the declaration shall be filed. There can be no doubt that

that the same event is referred to in the last clause as in the first, which requires the declaration to be filed ten days before the first term of the court to have a continuance. That event is the issuing of the summons or copias. The language is:

"Ten days before the term at which the summons or copias is made returnable."

What process is here referred to? Is it the ^{first} original process in the cause, though that may not be served, or is it the one which is actually served on the party, though that be an alias or pluries or subsequent writ? We may apply the language to either, and should apply it to the one which will best subserve the object of the Statute, for we may safely assume that that was the one intended by the legislature. In Darway v. Smith, 13 Ill. 671, we said: "The object of the Statute is to hasten proceedings and not allow a plaintiff to keep a defendant attending on court, from term to term, without apprising him of the nature of the complaint against him." If this be the object of the law, ^{and} this will not be doubted, then beyond all ~~question~~ ^{question}, the process referred to is the

by the statute. That we must learn
 by studying the object ^{and} purpose of
 the statute, ^{law} and those we have seen
 are best subserved by taking the
 one upon which the defendant is
 brought into Court, and ~~hence~~ ^{hence}
 this declaration was filed in time.
 The judgment is affirmed

~~The whole Court concurring.~~

Judgment affirmed.

38-46-15

Herring
in

Quincy

Opinion
Larson

Q. 12.

Answer

Recorded B. 12 P 137

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KING & KALES,
Attorneys for Plaintiff in Error.

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Q46 105 38
Supreme Court

James M. Haring
.

Benj. F. Mumby
et al

Abstract & Points

Filed Apr 23, 1862

J. L. Leland

clerk

King & Kales
Pepps Attys

Supreme Court of Illinois

Third Grand Division

Benjamin F. Lincoln & April P. 1863

Joseph H. Low

vs Defendant in Error

James W. Henning

Plf. in Error

Argument for Deft. in Error

Suit was commenced to Sept. P. 1860.
Declaration filed to Oct. P. 1860 though
within the days of commencement of
term - Two summonses were issued
and returned "not found" and Defendant
finally served with process to the
May Term 1861 & default & judgment,
June Term '61.

The abstract states as to the first
summons that it was returned into
Court Oct. 5th '60 - The Court will
notice that the date of the return
was August 31st '60, though the
suit did not happen to be filed until
Oct. 5th.

Plaintiff in Error insists that
judgment as in case of a non-suit
should have been rendered against

Defendants in Error (Plaintiffs below) because their declaration was not filed ten days before the second term after suit was commenced although the record shows that he was not brought into Court until the fourth term -

The point presented calls for a construction of the 8th section of the practice act

Rev. Stat. 1845 Chap. 83 § 8

Scates' Statutes p. 253 Tit. Pleading
The Statute says that "if no declaration shall be filed ten days before the second term of the Court, the Defendant shall be entitled to a judgment, as in case of a non. Ruit -"

The first question is what is the reason of the rule?

"The object of the statute" says Trimbull, J. in Downey v Smith, 13 Illinois 671 on p. 673, "is to hasten proceedings, and not allow the Plaintiff to keep a Defendant attending on Court from term to term without apprising him of the nature of the

complaint against him.

This, which it is submitted, is the real object of the statute, is obviously ^{fully attained} ~~met~~ by the construction that it applies & is intended to apply only to cases where there has been service of process.

The Plaintiff is not keeping the Defendant dancing attendance upon the Court from term to term "without apprising him of the nature of the complaint against him" when Defendant is not served and not before the Court at all.

It does not "hasten" proceedings any to file a declaration against a party who may never be brought in to answer it.

But in addition to these considerations it is to be noted that the declaration in the case at bar was filed to the second term of the Court but within the ten days - we have just seen why the statute was framed & the object of the requisition of the

declaration to the second term,
let us inquire why ~~the~~ ^{the} ~~declarations~~
~~are~~ required to be filed ten days
before ~~it~~?

"There was certainly some object
in requiring the declaration to be
filed ten days before the term,
and that object could only
have been to give that time to the
Defendant, to determine whether
he has a defence to the declaration
and to prepare to make it."

Collins v. Finkle, 24 Ill. 623
Cabre, C.F. on p. 624

This accurately states the reason
of so much of the rule now
being considered & it will
be at once perceived that it
can only apply where the
Defendant has been brought before
the Court by service of process.

we have thus established:

Firstly That so far as the Statute requires the declaration to be filed to the second term of the Court, this requirement is met by the fact in this case that the declaration was so filed and further that the reason of the rule is only applicable where there has been service

Secondly That so far as the Statute requires the declaration to be filed ten days before the term, that ^{the object} is to enable the defendant to prepare his defence and it is absurd to say that it has any application where the defendant is not before the Court -

And cessante ratio, cessat lex

I I.

Apart from the reason of the rule the argument is fortified by reference to Common Law Authority

In 1 Litt's Practice p. 418 Chap. 17 we find it stated that "except against attorneys or prisoners

the declaration can not be delivered or filed absolutely, until the Defendant has appeared, and put in and perfected special bail, when necessary, or filed common bail, or an appearance has been entered, or common bail filed for him by the Plaintiff according to the statute," &c, &c

And the whole discussion in the Chapter cited shows that the rule of our Statute made, it is for the convenience of the Defendant and the dispatch of business applies solely when the Defendant has been served with process and has some standing in Court so as to be entitled to proceed coercively against the Plf.

III.

By the first part of § 8 a Defl. is entitled to a continuance unless declaration & copy of instrument or account be filed "ten days before the Court at which the summons or Capias is made returnable &c"

This within the rule laid

down in Collins & Fiddle (242cc.)
does not necessarily mean the
original summons but the
summons on which service
is had as the ten days is merely
a matter of convenience to Dept.
So when the latter part of the
section speaks of the "second
term of the Court" it does
not necessarily mean ^{the} ~~second~~
^{but one} term of the Court next
after commencement of the
suit but may mean the
"second term" after service

IV.

The inconvenience of the opposite
rule is apparent.

The decision which Plf. in
Error asks for would apportion
half the judgments recovered
within the last five years

V

The Plf. in Error (Dept. below)
was brought into Court by the
May Term 1864. - His declaration
was filed by the Oct. T, 1860
The defense was not entered

until the June term 1861.

The declaration was on file
the October Term '60, January
Term '61, May Term '61 &
most of the June Term '61 before default.

VI

The abstract and printed
"point" of ~~the~~ Plaintiff in
their present no other
question for discussion. If
there are any others they
have not been indicated to
us nor have we been
able to find them.

We submit that the judgment
should be affirmed.

Abraham W. Fuller,
Counsel for Defs. in
Error

⁴⁶
Supreme Court of W.
Benj. F. Quinby
et al
ad

James W. Hering

Ms 38

Argument for
Defendants in
Error

Filed May 8. 1863
J. Leland
CM

M. V. Fuller
Counsel

UNITED STATES OF AMERICA,
STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, 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 Second Monday, (being the
Eighth day) of July in the year
of our Lord One Thousand Eight Hundred and fifty-one and of the
Independence of the said United States the Eighty fourth

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

Anthony C. Weising Sheriff of Cook County.
Attest, William L. Church Clerk.

Be it remembered, that heretofore
to-wit on the Twelfth day of July in the year of Our Lord
One thousand Eight hundred and fifty, there was filed in
the Court aforesaid a Certain Process, in words and figures
following, to-wit
State of Illinois }
Cook Circuit Court } To September term AD 1860

Benjamin F. Zimby
and Joseph W. Son }
James W. Weising }
Trespass on the Case
Damages \$ 2000. -
The clerk of said Court will
please issue a summons in an action entitled as
above returnable to September term next of our said
Court. Chicago July 12, 60 J. W. Chickering peff atty

And. Hereupon. to-wit. on the same day and year last aforesaid, there was issued out of and under the seal of said Court. the peoples writ of Summons. directed to the Sheriff of said County to Execute. in words and figures following. to-wit—

State of Illinois }
County of Cook }

The People of the State of Illinois. to the Sheriff of said County. Greeting.

We Command you that you summon James W. Wearing if he 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 first Monday of September next: to answer unto Benjamin F. Quincy, and Joseph W. Carr, in a plea of Trespass on the Case, to the damage of the said plaintiffs as is laid, in the sum of Two thousand dollars, And have you ~~then~~ ~~and~~ there this writ, with an Endorsement thereon, in what manner you shall have Executed the same

Seal

Witness William L. Church, Clerk of our said Court, and the Seal thereof at Chicago aforesaid, this Twelfth day of July A.D. 1860
Wm L Church Clerk

And afterwards, to-wit. on the 5th day of October in the year last aforesaid, said writ was returned into the Court

foresaid, by said Sheriff. Endorsed as follows. to-wit
 "The within named defendant
 not found in my County the 31. day of August 1860,
 return 10⁺ John. Gray Sheriff,
 By Wm P Gray Deputy

And afterwards, to-wit, on the 5th day of October in the
 year last aforesaid, said plaintiffs by their attorney
 filed in said Court, their Certain declaration, in words
 and figures following, to-wit -

"State of Illinois }
 Cook County } In Circuit Court
 Oct term A.D. 1860

Benjamin F. Zimby
 and Joseph Nelson plaintiffs in this suit by
 J. W. Chickering their Attorney
 complain of James W. Werring, defendant in this
 suit summoned &c. of a plea of trespass on the Case
 For that whereas the said
 plaintiffs before and at the time of the committing
 of the grievances hereinafter next mentioned, were the
 owners and proprietors of divers goods and chattels
 to-wit, a certain wooden and frame building and
 its fixtures and appurtenances, placed and standing
 upon a part of lot number ten of Block number
 four in fractional section number fifteen addition
 to Chicago, which said part of the lot is the piece

thereof bounded as follows, commencing at a point twenty-five and one third feet south of the north ^{most} east corner of said lot, and running thence east eighty feet, thence south twenty-five and one third feet, thence west eighty feet, thence north twenty-five and one third feet to the place of beginning - of great value to-wit, of the value of two thousand dollars, and which said goods and chattels have been and were before then let to him to one William Fordham for a certain time then to come and unexpired, and the same were then in the possession of the said William Fordham under and by virtue of the said letting, to-wit, at the County aforesaid to-wit, on the 1st day of July A.D. 1860.

Yet the said defendants well knowing the premises, but contriving and wrongfully and unjustly intending to injure, prejudice and aggrieve the said plaintiffs in their interest and property in the said goods and chattels, and to deprive them of the benefit and advantage thereof, while the said plaintiffs to were the owners & proprietors of the said goods and chattels and while the same were so let to and in the possession of the said William Fordham as aforesaid, to-wit, on the day and year and at the County aforesaid, wrongfully and unjustly seized and took and appropriated to his own use and deprive the said plaintiffs of the said goods & chattels, and thereby the said plaintiffs have been and are greatly injured, prejudiced & aggrieved

of their estate & interest in the said goods and Chattels to-wit, at the County aforesaid.

And also for that whereas the said plaintiffs heretofore to-wit, on the day and year last aforesaid to-wit, at the County aforesaid, were lawfully possessed as of their own property of certain other goods and Chattels to-wit, as certain wooden or frame dwelling house and building and its fixtures, out buildings and appurtenances, of great value to-wit, of the value of two thousand dollars and being so possessed the said plaintiff afterwards to-wit, on the same day & year as last aforesaid to-wit, at the County aforesaid Casually lost the said last mentioned goods & Chattels out of their possession, and the same afterwards to-wit, on the same day and year as last aforesaid to-wit, at the County aforesaid Came into the possession of the said defendant by finding.

Yet the said defendant well knowing the said last mentioned goods and Chattels to be the property of the said plaintiffs has not yet delivered the same nor any part thereof to the said plaintiffs although often requested so to do, and hath hitherto wholly refused so to do, and afterwards to-wit, on the day and year last aforesaid at the County aforesaid Converted and disposed of the same to his own use.

And also for that

whereas the said plaintiffs before and at the time of the committing of the grievances hereinafter mentioned were the owners and proprietors of certain other goods and Chattels to-wit, a certain frame or wooden building & dwelling house, out houses and fixtures and appurtenances, placed and standing upon that part of lot number ten of Block number four (4) of fractional section number fifteen addition to Chicago. bounded as follows. Commencing at a point twenty five and one third feet south of the north west corner of said lot and running thence east eighty feet. thence south twenty five and one third feet. thence west eighty feet. thence south twenty five and one third feet to the place of beginning. of great value to-wit of the value of two thousand dollars, yet the said defendants well knowing the said last mentioned premises, but contriving and wrongfully and unjustly, intending to injure and aggrieve the said plaintiffs of their interest in the said last mentioned goods and Chattels and to deprive them of the benefit and advantage thereof while the said last mentioned goods and Chattels were owned by the said plaintiffs, to-wit, on the day and year last aforesaid and at the bounty aforesaid, wrongfully and unjustly seized and took and appropriated to his own use and benefit and deprived the said plaintiffs of the said last mentioned goods and Chattels

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and thereby the said plaintiffs have been and are greatly injured prejudiced and defrauded of their rights and interest in the said last mentioned goods and Chattels. to-wit, at the County aforesaid.

Wherefore the said plaintiffs say that they are injured and have sustained damage to the amount of Three thousand dollars, and therefore they bring suit re

J. W. Chickering
Plffs Atty

And afterwards, to-wit, on the seventeenth day of May Twenty first day of January in the year of our Lord One thousand Eight hundred and fifty one, the same being one of the days of the January Term of said Court. the following proceedings, among others were had and entered of record. to-wit—

Benjamin F. Trimby
and Joseph W. Lorr

19600

James W. Werring

} Care

On motion this order is continued with order for alias process of summons. to issue against the defendant

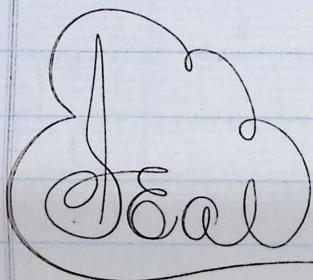
And afterwards, to-wit, at the Seventeenth day of May in the year last aforesaid there was issued out of and under the seal aforesaid

Court. the Peoples writ of alias summons. directed to the Sheriff of said County to execute in words and figures following. to-wit -

State of Illinois }
County of Cook }

The People of the State of Illinois to the Sheriff of said County. Greeting.

We command you as we have many times before that you summon James W. Werring if he 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 fourth Monday of May next to answer unto Benjamin F. Quincy, & Joseph W. Carr in a plea of trespass on the case to the damage of the said plaintiff as is paid in the sum of two thousand dollars, and have you there this writ with an endorsement thereon, in what manner you shall have executed the same



Witness William L. Church Clerk of
Our said Court, and the seal thereof
at Chicago aforesaid the seventeenth
day of May A.D. 1861
Wm L. Church Clerk

And afterwards, to-wit on the sixth day of July in the year last aforesaid, said alias writ was returned into

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The Court aforesaid, by said Sheriff, endorsed as follows. to-wit:

Served by reading to the within named defendant the 17th day of May 1861.

Fees. per. in so. mile 10. return 10 = 70¢. Paid by plffs atty

Anthony L. Herring Sheriff

By John A. Nelson Deputy

And afterwards, to-wit. at the June Term of said Court, to-wit. on the Sixth day of July in the year last aforesaid, the following proceedings among others, were had and entered of record, to-wit.

Benjamin F. Quincy
and Joseph L. Sim

have

19660

James W. Herring

This day Come the said plaintiffs by J. W. Chickering their Attorney, and due personal service of process of summons issued in said cause, having been had on the said defendant, and he being now three times solemnly called in open Court, comes not, nor does any person for him, but herein he makes default, which on motion is ordered to be taken and entered of record; wherefore said plaintiffs ought to have and recover of the said defendant, their damages therein sustained by occasion of the premises and thereupon it is ordered that a jury come to Enquire of and assess said plaintiffs damages

herein hereafter.

And afterwards, to-wit. at the July term of said Court, to-wit. on the Eleventh day of July in the year last aforesaid, the following proceedings, among others, were had and entered of record, to-wit. —

"Benjamin F. Quincy
and Joseph DeSom

James W. Herring

Case

19650

This day again come said plaintiffs by their aforesaid Attorney, and the default of the said defendant having been heretofore taken and entered of record, to-wit. on the 6th day of July instant, and an order having then been entered for a writ of enquiry, it is now ordered that a Jury come to enquire of and assess said plaintiffs damages herein — Whereupon come the Jurors of a Jury of good and lawful men to-wit. Charles Appel Lucas Beechley, John M. Welton, D. D. Broadway, M. B. Scram Peter Blythendorf, Henry Simcott, A. L. Van Brunt, L. F. Wark, John Pomeroy, and William Melvill. J. L. Sedgwick who being duly elected, tried and sworn diligently to Enquire of and a true assessment make of said plaintiffs damages herein (if any), and after hearing the evidence adduced by the plaintiffs, and instructions from the Court, retire to consider of their verdict, and afterwards return into Court and say

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That the Jury find the defendant guilty, and assess the plaintiffs damages by reason of the premises to the sum of One thousand dollars -

Therefore it is considered by the Court that said plaintiffs do have and recover of the said defendant their damages of one thousand dollars in form as aforesaid by the Jury aforesaid assessed, together with their costs and charges by them about their suit in this behalf expended, and have execution therefor

State of Illinois, }
COUNTY OF COOK. } S. S.



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 all papers and proceedings in a certain cause heretofore pending in said Court on the Common Law side thereof, wherein Benjamin F.

Trinity Ebas were plaintiffs and James M. Kerr defendant

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our said Court at Chicago, this Fifth day of October A. D. 1891

Wm L Church Clerk.

Supreme Court of Illinois

Jacobs vs Herring, plff in error

v

Benjamin F Quincy & Joseph H. ^{Low} ~~Quincy~~ depts in error

And now comes the said plaintiff in error by King & Kales his Attorneys
And on the foregoing record assigns the following errors to wit:

- 1st That the ^{said Circuit} Court erred in ~~rendering~~ ordering the default of said Herring to be taken and entered against him
- 2^d That said Circuit Court erred in rendering ^{said} judgment against said Herring
- 3^d That said Circuit Court erred in not rendering judgment in favor of said Herring.
- 4th That said Circuit Court erred in rendering its said judgment against said Herring, in this, that said Herring was then and there entitled to a judgment in his favor as in case of a non-suit; and said Circuit Court should then and there have rendered judgment in his favor and against said Quincy & ^{Low} ~~Quincy~~ accordingly.
- 5th That said judgment is in other respects informal and erroneous

King & Kales Attys and
of Counsel for plff in error

Let a supersedeas issue; bond \$1500
Edmund Aiken surety
J D Eaton

State of Illinois
In Supreme Court

James B. Henning
Plaintiff in Error

vs
Benjamin F. Quincy &
Joseph H. Lord
defendants in Error

and to the
circuit court
of Cook County

And now comes
Benjamin F. Quincy one of the above
named defendants in error & says
that in the record and proceedings aforesaid
there is no error, but that the same
are in all things right, just and proper
wherefore he prays that the judgment
aforesaid may be in all things affirmed

J. B. Henning Atty
for B. F. Quincy
one of the defendants in
error

Supreme Court

Herring

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Quincy Church

John in End

Chicago July 28th 1863
To J. W. Chickering Esq
Counselor to

P

You are authorized
to enter my appearance & join me in
a cause pending in the Supreme Court
State of Illinois wherein
James O. Henning

is plaintiff in case &
Benjamin F. Leach

myself are defendants in case
to bring the cause for hearing

Yours Truly
Joseph H. Burr

46 105-38
Supreme Court of Illinois

James W. Herring
deft in error

Benjamin F. Winby et al
deft in error

Records & assign-
ment of errors

Filed November 9th 1861

L. Leland Clerk
per J. B. Rice Deputy