

No. 13101

Supreme Court of Illinois

Prettyman

vs.

Flood

71641  7

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 100.
1860.

Pettyman
vs
Hoad

191

Refused

State of Illinois } Supreme Court
Third Grand Division } April Term 1860.

Nicholas C. Flood } Error to Lagewell
v } County.
Benjamin S. Prettyman }

Argument for Plaintiff in Error.

This was an action of Replevin brought by Prettyman against Flood, a Constable of Lagewell County, to recover a horse which had been levied upon by him, under an execution in favor of S. W. Fuller vs Calhoun Sterling & Co against William Trent, as the property of Trent.

The horse was sold in the Spring of 1858 by the Sheriff of Lagewell County under an execution in favor of Durkee & Bullock against William Trent, at that sale Prettyman bought the horse in question and left it with Trent where it remained until levied upon by Flood in May 1859.

There are several points in this case either of which are clearly

sufficient to reverse the decision of the Court below.

1st In order to have made the sale good the purchaser should have taken possession of the property ~~and~~ at the sale and not left it with the defendant in execution for over a year and thus give the defendant in execution a false credit which he would not have been otherwise entitled to. It is a well established principle in law that the possession should accompany the title to personal property or a sale will be void per se as to creditors. 1st Scammon 297. 302; 3 Gilman 464; Twines Case in Smith's leading Cases Vol. 1. 19 Illinois 595. And no exceptions are made where sale is made by officer. Powers v Green 14 Illinois 389, Harrington v Smith v Caswell. 15 Johnson 430 - Dickinson v Cook 17 Johnson 332. These cases in Johnson's reports are directly in point on this question. In the case of Thompson v Yeck 21 Illinois 74, this court say that "If goods are purchased on execution by a stranger, and from

" motives of humanity are left in pos-
" session of the debtor, for a temporary
" and honest purpose, the parties not
" standing in relation of debtor and
" creditor, the transaction has been
" held in England not to be fraudulent
" as to creditors, and the title will
" remain in the purchaser. Here it
" would be required that the pos-
" session should accompany and
" follow the title, or a sale will be
" void per se as to creditors and pur-
" chasers, &c" Even if the ~~sale~~ leav-
ing of the horse with Trent was for
an honest purpose, it would be
void in this case. The horse was
left for a very unreasonable time.
over one year. and under very
suspicious circumstances, as we
shall presently see.

The instructions given come in di-
rect conflict with the principles
of law laid down in all the
cases above cited. And in fact
there ~~are~~ no cases to be found
in the books anywhere that will
warrant the giving of such
instructions.

The first and second instructions asked for by the defendant below which were refused by the court ought to have been given. They might have been made much broader.

2^d

The second point in which the Court below erred is that the defendant should have been allowed to show that there was collusion between Trent and Prettyman to defraud the creditors of the former. Durkee & Bullock the plaintiff in execution in the sheriff hands instructed the sheriff not to sell Trents property unless he could have made them bring fifty cents on the dollar. The sheriff was induced in the absence of the Bail Durkee & Bullock and their attorney by Prettyman and Trent to go on with the sale. And the sheriff did sell at that time enmasse some five or six thousand dollars worth of property for so many hundred - and Prettyman who was Trents attorney became the purchaser, and left the goods in

Trents possession. These facts would clearly have appeared in evidence, had the Court ~~have~~ permitted the same to be given in evidence.

These facts clearly show that there was actual fraud in the whole transaction such as should receive no favor from any court.

The case seems to me to clear for argument - The Court below manifestly erred in every decision made in this case

S. D. Puterbaugh
for Plaintiff
in Error.

Supreme Court
April Term 1860

Nicholas L. Flood
v (100)

Benj. S. Prettyman

Argument for
Plaintiff in Error.

Filed April 19. 1860
L. Leland
Clerk

S. D. Puterbaugh
Att'y

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Tazewell 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 Tazewell County, before the Judge thereof, between Benjamin S. Petherman

plaintiff, and Nicholas C. Flood

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 15th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty.....

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

Benjamin S. Putnam

No.

vs.

Nicholas C. Flood

WRIT OF ERROR.

FILED

March 15th A. D. 1860.

L. Leland

Gleek.

STATE OF ILLINOIS, }
SUPREME COURT, ss.

The People of the State of Illinois,

To the Sheriff of the County of

Tazewell

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Tazewell County, before the Judge thereof, between Benjamin S. Prettyman

plaintiff, and Nicholas C. Flood

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

_____ as we are informed by his complaint _____ the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law: Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Benjamin S. Prettyman

that he _____ be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if he _____ shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Benjamin S. Prettyman

_____ notice, together with this writ.

Witness, The Hon. John D. Eaton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 15th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty.

L. Leland

Clerk of the Supreme Court.

J. J. McKee Deputy

100

No. Benjamin S. Puttymun
vs. Nicholas C. Flood

SCIRE FACIAS.

FILED April 18 A. D. 1860

L. Deland
Clerk.

per
Service
Mileage
per K
50
15
65-

State of Illinois } ss I have duly served the within by reading
Jesse W. Bannett } the same to Benjamin S. Puttymun this
19th day of March A.D. 1860

Wm. H. Keays
Shff & C

1
Held at a Term of the Circuit
Court begun and held at the
Court House in the City of
Tekin, in, and for the County
of Tazewell in the State of Illinois
On the first Monday of the Month
of June in the Year of our Lord
One thousand eight hundred
and fifty nine, it being the
Sixth day of said Month of
June. Present Hon James Harriott
Judge of the 21st Judicial Cir-
cuit in the State of Illinois,
Hugh Fullerton, States attorney
Thomas C. Reeves, Sheriff-
and Merrill C. Young, Clerk

Be it remembered that on the
26th day of May AD 1859 a
Plaint was filed in the words
of figures following, to wit:

Benjamin S. Prettyman } In
vs } Replevin
Nicholas C. Flood }

State of Illinois } ss. of the June Term
Tazewell County } of the Tazewell Circuit
Court AD 1859
Benjamin S. Prettyman being first
duly sworn according to Law
deposeth & saith, by way of Plaintiff

herein, that a certain ^{Bay} Horse of the value of one hundred dollars has been unlawfully taken and is unjustly detained from him by one Nicholas Flood & he avers that the said Horse is his own property and he is now entitled to the immediate possession of the same. He also avers that the same has not been taken for any Tax, assessment or fine levied by virtue of any Law of this State, nor seized under any execution or attachment against the Goods and Chattels of Affiant. He therefore Prays that a writ of Replevin may issue directed to the Sheriff of said County & the Horse may be replevied from said Flood & delivered to Affiant.

B. S. Pettyman

Subscribed & sworn to
before me this 26th
day of May 1859.

M. C. Young clerk

Afterwards, to wit:
on the same day, last aforesaid, a writ of Replevin was issued in the words and figures following to wit:

State of Illinois } ss.
Jasper County }

The People of the State
of Illinois, To the Sheriff of said County
Greeting:
If Benjamin S. Pettyman of

said County of Tazewell shall give you good and sufficient security to prosecute his suit to effect, and without delay, and to make return of the following described goods & Chattels, the property of him the said Benjamin S. Pettyman to wit:

One bay Horse of the value of One hundred dollars, which Nicholas C. Flood, also of said County unlawfully took, and unjustly detains, and return the said property, if return thereof be awarded, and further to save & keep you harmless in replevying said property: then you are to cause the said goods and Chattels to be replevied and delivered to said Plaintiff without delay. And summon the said defendant personally to be & appear before our Circuit Court in, & for said Tazewell County, on the first Monday of June A.D. 1859 to answer to the said P^{laint} of the ^{said} Plaintiff for his unjustly detaining the goods & Chattels aforesaid. And make due return of the Bond to be taken of the said Plaintiff as aforesaid, together with this writ, to the Clerk of our said Court, with an endorsement hereon as to your doings in the premises

Witness Merrill C. Young
Clerk of said Court, and the Seal

4
3 thereof at Tekin in said County
this 26th day of May A.D. 1859
Merrill C. Young Clerk

Which said writ was
afterwards, to wit; on the 6th day of June
A.D. 1859 returned with the following
endorsement thereon: to wit;

" I have duly served
" the within by reading the same
" to Nicholas C. Flood and by taking
" the within described property, to wit;
" one Bay Horse and putting the same
" in the possession of Benjamin S.
" Puttyman this 26th day of May A.D. 1859
" J. C. Reeves Sheriff J. C.

Thereafter, to wit; on the 6th day of
June A.D. 1859 a Replevin Bond
was filed in the words & figures fol-
lowing to wit:

" Know all men by these
" presents, that we, Benjamin S. Puttyman
" and W. Don. Maus are held and
" firmly bound unto Thomas C. Reeves
" Sheriff of the County of Tazewell in the
" State of Illinois, and to his Successors
" in office, executors, administrators
" and assigns; in the penal sum of Two
" hundred dollars, lawful money
" of the United States, for the payment
" of which sum, we do hereby jointly
" and severally bind ourselves, our

heirs, executors and administrators.

The condition of this obligation is such, that whereas, on the 26th day of May in the year of our Lord one thousand eight hundred and fifty nine the said Benjamin S. Pettysman sued out of the Circuit Court of the County aforesaid, a writ of Replevin against Nicholas C. Flood Defendant for the recovery of the following described goods & chattels, property, to wit:

One Bay Horse of the value of one hundred dollars

Now, if the said Benjamin S. Pettysman, Plaintiff, shall prosecute his suit to effect, and without delay, and make return of the said property, if return thereof shall be awarded, and save & keep harmless the said Sheriff in replevying the said property, then this obligation to be void, otherwise to remain in full force & effect.

Witness our hands and Seals this 26th day of May A.D. 1859

Signed Sealed & delivered in presence of

Shff J. C. Ill

Benjamin S. Pettysman
W. Dow Maus

Saturday June 11th 1859
Benjamin S. Pettysman Plaintiff in
Nicholas C. Flood Replevin

And now on this day
 come the Plaintiff in his own proper
 person and the defendant by his
 attorney J. D. Puterbaugh, and on
 Plaintiff's Motion this cause is con-
 tinued at the cost of said Plaintiff.

It is therefore ordered &
 adjudged by the Court, that the defend-
 ant recovers of said Plaintiff, the
 costs and Charges by him about
 his defence herein expended, and
 that execution issue therefor.

Held at a Term of the Circuit
 Court begun and held at the
 Court House in the City of Pekin, in
 and for the County of Tazewell, in the
 State of Illinois, on the first Monday
 of the Month of September, in the
 Year of our Lord one thousand eight
 hundred and fifty nine, it being
 the fifth day of said Month of
 September Present Hon. James Harrison
 Judge of the twenty first Judicial
 Circuit in the State of Illinois.
 Hugh Fullerton District Attorney
 Thomas C. Reeves Sheriff and
 Merrill C. Young Clerk

Benjamin S. Pettymann } Plaintiff in
 v } Replevin
 Nicholas C. Flood

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Be it remembered that on the 24th day of August A D 1859 a Declaration was filed in the words & figures following, to wit:

State of Illinois } Circuit Court
Jazewell County } September Term 1859

Nicholas C. Flood was
summoned to answer unto Benjamin S. Prettyman in a plea Wherefore
he took one Bay Horse of him the
said Plaintiff of the value of One
Hundred dollars, and unjustly
detained it against Sureties and
pledges. - And Whereupon the said
Plaintiff by Bailey & Maus his
attorneys complains that the said
defendant on, to wit: the 25th day
of May A.D. 1859 at the County, took
the Horse aforesaid of him the said
Plaintiff, and unjustly detained
the same against Sureties and
pledges until &c. Whereby the Plaintiff
hath sustained damages to the
value of One Hundred dollars
& therefore he brings suit &c
Bailey & Maus
Attys for Plff

Afterwards, to wit, on the 6th day
of September A.D. 1859 ~~James~~ ~~James~~
~~James~~ filed in the words and
the Defendant filed his Pleas in the words
And

figures following. to wit

State of Illinois } Circuit Court
Tazewell County } September Term 1859

Benjamin S. Prettyman }
v }

Nicholas. C Flood }

And the said defendant by S. D. Peterbaugh, his attorney comes and defends the wrong and injury when &c and says that he did not take the said bay Horse in said Declaration mentioned in manner & form as the said plaintiff hath above thereof complained against him, and of this the said defendant puts himself upon the Country &c.

S. D. Peterbaugh
att'y for Deft

And Plaintiff
doth the like.

Prettyman

And for further Plea in this behalf Defendant says Actio Non, because he says that the said bay Horse in the said Declaration mentioned at the time when &c was the property of one William Trent and not of the said Plaintiff as by

the said declaration is above supposed
 - and this the said defendant is ready
 to verify, Wherefore he prays judgment &c

S. D. Puterbaugh
 atty for Deft

And Plaintiff says
 that said Horse is not the property of
 Wm Trent, But is the property of said
 Plaintiff, & this he prays may be enjoined
 of by the Country. J. S. Prettyman

And for further plea in this
 behalf the said defendant saith Actio
 Now, because he says that he is now,
 and was at the time of issuing
 said Execution an Acting Constable
 in and for said Tazewell County
 Illinois, and that on the 26th day
 of March 1859 an Execution came
 into his hands as such Constable
 dated the 26th day of March 1859
 from the office of J. W. Glasgow, an
 Acting Justice of the Peace for said
 County, having jurisdiction in the
 Matter, in favor of S. M. Fuller for the
 use of Calhoun Sterling & Co and
 against William Trent, for the sum
 of \$76.¹⁰⁰ & costs, and that by virtue
 of the said Execution, he the said
 defendant levied upon the said
 Bay Horse, in said declaration
 mentioned on the 25th day of
 May 1859 as the property of William

Trent, the defendant in said Execution who was at the date of said Execution the owner of the said bay Horse - And he the Deft. is now and was then entitled to the possession of the said bay Horse, and that said Plaintiff is not the owner of said bay Horse - And this Defendant is ready to verify wherefore he prays judgement. &c.

S D Puterbaugh

Deft's atty

And Plaintiff says that said Horse, in said 3^d Plea ^{admitted} ~~is not~~ is not the Property of said William Trent, but is the property of said Plaintiff & this he prays may be enquired of by the Country.

Pettyman.

Thursday September 8.th 1859

P. S. Pettyman } Plaintiff in
N. C. Flood } Replevin

And now on this day come the Plaintiff, in his own proper person, and the Defendant by his attorney S. D. Puterbaugh, Whereupon came a jury of twelve good and lawful men, to wit: Seth Wilson, Elzey Williamson - Charles Buckley - John Shellenberger.

Sylvester G. Parker - David Shay -
 Timothy Larimore - George W. Porter
 William Seever - John Haas
 Apolos Cone & Nathan Dillon, duly
 elected tried and sworn, who having
 heard the proofs and Allegations
 of the Parties and the Argument
 of Counsel thereon, for verdict say
 He the Jury find for the Plaintiff.

It is therefore ordered
 and adjudged by the Court, that
 the Plaintiff recovers of said defendant
 the Costs and Charges by him about
 his suit expended, and that exe-
 cution issue therefor.

Whereupon the
 Defendant filed a motion for a new
 Trial in the words & figures following
 to wit:

B. S. Prettyman	3	Circuit Court
N. C. Flood	3	September Term
		1859

The defendant comes
 and moves the Court to grant
 a new Trial in this Cause, for
 the following ~~causes~~ ^{causes}, to wit:

- 1st The Court gave improper instructions
 for the Plaintiff, and refused
 proper instructions on part
 of Defendant.
- 2nd The Court refused proper
 evidence on the part of
 Defendant -

Which said motion was overruled by
 by the Court.

And now afterwards, to wit, on the 13th day of September A.D. 1859 a Bill of exceptions was filed in the words and figures following, to wit:

State of Illinois } Circuit Court
Jagrevill County } Sept Term 1859

~~Be it remembered that at the~~

P. S. Gettyman

N. C. Flood

Be it remembered that at the trial of this cause the Plaintiff proved by one William Trent that the Plaintiff purchased the Horse in question at a Sheriff's Sale made of the property of the said Trent, under an execution against Trent, in the Spring of 1858 and that the Horse, after the sale to the Plaintiff, was left, by the Plaintiff, in the possession of said Trent, and was in possession of Trent the greater part of the time from date of the sale, until it was taken by the defendant from him, in May 1859 and that the property was not his, but the Plaintiff's.

Plaintiff also proved by Thomas C. Reeves, Sheriff of said County,

that the horse in question, was sold at a Sheriffs Sale made by him in the Spring of 1858. by virtue of an execution in favor of Durkee or Bullock against said William Trent, and that the Plaintiff, became the purchaser of the horse in question and paid him, as sheriff, for the same, and that he had at divers times since said sale, seen the horse in the possession of the said Trent.

The Plaintiff here rested his case.

The defendant then showed by one John W. Glasgow, that he was an Acting Justice of the Peace, in, and for said County, and that the defendant was an acting Constable, in, and for said County, and that there was a judgement on his docket in favor of S. W. Fuller, for the use of Calhoun Sterling & Co and against William Trent,

Defendant then offered said judgement in evidence, which was in the words and figures as follows to wit:

S. W. Fuller for the use of Calhoun Sterling & Co	} Debt,
v William Trent	

December 7th 1858
Plff. by his atty S. D. Puterbaugh filed his bill

it bring a Note dated April. 6th 1857
payable to Wm Trent six months after date
for the sum of sixty five dollars with ten
per cent interest from date

(Signed) Wm McComp
indorsed in blank on the back

Wm^{his} Trent.
marks

Summons issued same date to Const
Flood for the appearance of the Deft on
the 22nd day of December 1858 at 1 O'
clock P.M.

S. D. Puterbaugh security for costs
Summons returned, served by reading
to the defendant December 8th 1858
Service 25 Milage \$1.00 N. C. Flood Const.

December 22nd 1858 one
O'clock P.M. Plff. appeared by his atty S. D. Puterbaugh
Deft appeared by his atty. B. S. Puttymann.
Trial had. — Sworn & examined on the
part of Plff as witness S. D. Puterbaugh.

After hearing the Testimony
& allegations of the Parties. It is therefore
considered by me, after Casting the interest
that S. W. Fuller for the use of Calhoun
Sterling do recover of Wm Trent, the
sum of seventy six dollars & ten cents
debt & costs of suit before me

J. W. Glasgow J. Peace.

January 17. 1859 Execution issued to
Const Flood.

March 26. 1859 Execution returned
by Order of Plffs atty for a New Execution
Service 50. Milage \$1.00 N. C. Flood C. J. C.

March 26th 1859 Execution

15-

to Const A.C. Flood

May 26th 1859 Ex. returned endorsed
May 25th 1859 levied on one Bay Horse
as the property of William Trent.

May 26th 1859 said Horse was replevied
from me by the Sheriff of Tazewell County

No other Property found whereon to
levy - Service 50. Milts 100 Levy 25[¢]

Removing Horse & Keeping 100

A.C. Flood C.T.C.

Debt out \$76.10 amt of Judgment Dec 22 1858

cost 62

Ex 25

Ex 25

A.C. Flood 125

" " on Ex 150

" " " " 275 \$82.72

and that an Execution dated March 26th
1859 was issued on said Judgment, &
delivered to the Defendant - The Defendant
then offered the Execution in Evidence,
together with the endorsement of the
Officer, as follows, to wit:

State of Illinois } ss

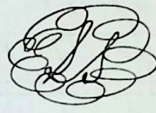
Tazewell County }

The People of the State of
Illinois to any Constable
of said County Greeting:

We Command you that of
the Goods & Chattels of William Trent
in Your County, You make the sum
of Seventy six Dollars & ten cents debt
and \$3.⁸¹/₁₀₀ costs, with interest from

the 22nd day of December 1858 which
S. W. Fuller for use of Calhoun Sterling
lately recovered, before me, in a certain
plea against the said Wm Trent.

And hereof make return within twenty
days from this date.

Given under my hand and seal
this 26th day of March 1859
J. W. Glasgow J. P. 

Returned endorsed as follows to wit
Come to hand March 26th 1859. N. C. Flood Clerk
May 25th 1859 Seized on one Bay Horse and
the property of William Trent
May 26th 1859 The above horse, seized on,
was taken from me by peplevy, by the Sheriff
of Sagwell County.

No other Property found whereon to Levy.
Service 50 Mileage 1.00 Levy 25 removing and
keeping said Horse 1.00.

N. C. Flood C. J. C.

The Defendant offered to prove by Thomas
C. Reeves, Sheriff as aforesaid, that the
Personal Property of the said William
Trent, was sold En-masse and that
there was collusion between the said
Trent and Plaintiff to defraud the
creditors of the said Trent, and that
said sale was made contrary to the order
of the Attornies of said Durkee & Bullock
and that the said sale was made at
the request of ~~the~~ said Trent & the
Plaintiff. and that the Property was sold

enmasse, & for a nominal sum; all of which the Court would not permit, to which, defendant then and there excepted. The evidence here rested.

The Plaintiff then asked for the following instructions, which were given - and to which defendant then & there excepted.

The Plaintiff asks the Court to instruct the jury, that if they believe from the evidence that Reeves as Sheriff of the County, levied an Execution against Trent, upon the Horse in Controversy as the Property of Trent, & under the Execution & levy, sold the Horse to Pettyman at Public Sale as the Property of Trent, that the Horse is his property as against all the Creditors of Trent, no matter where Pettyman took him, or in whose hands he left him.

That the placing of Property purchased at Sheriff's Sale, by the Purchaser, after the purchase in the hands of the judgment Debtor, is not fraud upon the Creditors of such judgment Debtor

And that if the jury believe from the evidence that the property in Controversy, is the property of Pettyman, & not the Property of Trent. They will find for the Plaintiff

The Defendant then ask^d the Court to give the following instructions which were refused - and to which refusal the Defendant then & there excepted

B. S. Pettymaw }
 v }
 N. C. Flood } Defendants
 instructions

The Court instruct the jury that if they believe from the evidence that the Plaintiff purchased the Horse in question at a Sheriff's Sale of the Property of William Trent, & left the Property in the hands of Trent until it was levied upon by the Execution in the hands of the Defendant against Trent. It raises a presumption of fraud.

That unless possession of Property follows the purchase of property the sale is void

That a sale made of personal property en masse is void and that if they believe from the evidence, that the property in question was purchased at such sale en masse with other property, they will find for the Defendant.

The case was then submitted to the jury, who returned a verdict

as follows

We the jury find for the Plaintiff.

The Defendant then moved the Court for a new trial as follows.

R. S. Pettyman } Circuit Court
v } September Term
N. C. Flood } 1859.

The Defendant comes and moves the Court to grant a new trial in this cause for the following reasons, to wit

1st The Court gave improper instructions for the Plaintiff and refused proper instructions on part of Deft.

2^d The Court refused proper evidence on the part of Defendant.

Peterburgh
for Deft

which motion was overruled to which ruling of the Court the Defendant then & there excepted & prays for the signing by the Court of a Bill of exceptions, which is done accordingly

James Harriott Seal

State of Illinois } ss
Tazewell County }

I Merrill C. Young
Clerk of the Circuit Court in and
for said County & State do hereby
certify that the foregoing Twenty pages
contain a full true & complete copy
of the Records of the proceedings had
in the Cause therein named as
the same appears of Record in my
office —

Given under my hand
and the Seal of said Circuit
Court herewith affixed
at PeKin this 5th day
of March, AD 1860.

Merrill C. Young Clerk

And now comes the said plaintiff
in error by S. D. Peterbaugh, his attor-
ney as assigns for error the
following.

1st The Court erred in ~~not~~
giving the instructions asked for
by the plaintiff below

2nd The Court erred in ~~not~~ ^{neglecting}
the instructions asked for by the
defendant below

3^d The Court erred in overruling
the motion for new trial

8 Q Puterbaugh
for Jeff in
Error.

Whereupon comes the said Rejoinder of Puttymau, by his Attorney and says that there is no error in either in the record and proceedings aforesaid, or in the matters assigned for error, and prays that the said Supreme Court here may proceed and examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error, and that said Judgment, aforesaid in form aforesaid be in all things affirmed —

C. C. Arney,
Attest J. J. Mead
For Defendant

100
B. S. Prettyman
or

N. C. Flood
=====

Transcript and
=====
Asst. of Envois

Filed / March 15, 1860
L. Leland
Clerk