

14291

No. \_\_\_\_\_

# Supreme Court of Illinois


Neil

---

vs.

Morgan

---

71641  7

46

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division.

---

No. 185

---

14291

*Mail*

*2/10/77*  
*2365*

*Prepared*

STATE OF ILLINOIS,  
Supreme Court, Third Grand Division.

OTTAWA, APRIL TERM, 1862.

JAMES NEIL  
—vs—  
RICHARD P. MORGAN ET AL. } ERROR TO McLEAN.

Brief and Argument on behalf of Defendant in Error.

The only point presented on this record arises by demurrer to the declaration.

The demurrer craves oyer of, and sets out, the bond sued on.

The bond is taken by the sheriff of Cook county, by virtue of a *capias ad resp.*, issued by the clerk of the circuit court of Peoria county, under section 3d of chapter entitled "*Capias*," of Scates' Statutes, p. 237.

The declaration in the case at bar is against *Richard P. Morgan, Sidney S. Morgan, and Peter W. Peckham*; but the bond no where in its body or condition names any person but Richard P. Morgan. It begins, "Know all men, &c., that we, Richard P. Morgan, of, &c., are held and bound unto John L. Wilson," &c. And the condition is: "Now, if said Richard P. Morgan shall be and appear at the said court, to be held at Peoria, aforesaid, on, &c.; and in case the said ——— shall not be received," &c. And thus all through the condition no other name, except Richard P. Morgan's is mentioned.

For a full copy of the bond, your Honors are referred to the plaintiff's abstract, (p. 1 & 2.)

The statute (sec. 3, aforesaid) is imperative that the name or names of the bail shall be set out. It says:

"And for the purpose of avoiding errors in the taking thereof, the condition shall be substantially in the following form."

And in the form given in the section the name of the bail is to be inserted as indicated by the letters "E," "F."

The spirit of our constitution and laws is adverse to the system of imprisonment and bail; and when a person claims any benefit under the section referred to, it is but just that he should show a strict compliance with the requirements of the statute.

As a general rule it has been held that *material* errors and omissions in a bail bond would vitiate it.

In *Adams vs. Hedgepeth*, (5 Jones N. C. Law Rept's, p. 327,) exactly the same point now raised in the case at bar was directly presented, and, on full argument, the bond was adjudged to be void, and the bail discharged.

In 2d Bailey, (So. Car., *Perry vs. Dobbin*, p. 343,) it was held that a bail bond, with a blank condition, was void.

So in Tidd's Practice, (vol. 1, p. 225, marginal,) it is said a bail bond "is void, if executed before the condition is filled up."

And the same, in 3 Camp., p. 181.

But in this State the statute gives the form of the condition, and the name of the bail is a material and essential part of it—appearing in two different places in the prescribed form.

In *Barnard vs. Viele*, (21 Wendell, p. 89,) it was decided that *bail bond must be in the terms prescribed by the statute, or it will be void.* And that case is a very strong one in support of the position I am urging.

A bond returned to the clerk's office, specifying no sum to be paid by the obligor, is void.

HARRISON vs. TIERNANS, 4 Rand., 177.

And yet if a blank can be sustained in one material part of a bond, to be filled by averments in a declaration, why not in any other part?

A bail bond taken to the plaintiff, instead of the sheriff, is void.

HANDLY vs. EWINGS, 4 Bibb, 503.

And why? Because it is not a compliance with the statute. It is insisted that only by a strict and literal compliance with the statute can the creditor obtain the benefit of the bail bond, for the whole proceeding is statutory:

"All bail taken according to the directions of this chapter shall be deemed and taken as special bail, &c.

Sec 4. of Chap. on Caplas.

The authorities presented on behalf of plaintiff in error are but few of them to the point.

The case, in 9 Watts, 43, is decided on the ground that the matter of misdescription was not necessary matter in the condition, and also that the bond did substantially recite the action, &c.

4 Halstead, 97, decides a very different case from one at bar, and decides it upon a principle adverse to the point made by plaintiff. There was a motion by bail to be discharged, on the ground of variance between the writ and declaration. They were discharged, and it was said, "*Courts of justice suffer slight variances to be taken advantage of in this way.*"

Hardin, 501, was decided on the ground that the Kentucky statute prescribed no particular form to be pursued in drawing the bond.

4 Leigh, 276. This case is more in point than the others cited, and one point presented is similar to the case at bar; but the question arose collaterally between different parties than the bail and the creditor, and *after judgment had been obtained by default against the bail*—they making no objection at all—the objection being made by other parties.

An enlightened system of jurisprudence has already frowned upon the facility with which arrests and imprisonments for debt have been made; and the courts by a construction reaching the true spirit of our Constitution and the laws, and by the wholesome application of the rigid rules of the common law, in favor of the liberty of the citizen, have almost entirely purged the statute under consideration, of its license to abuse.

The case at bar discloses the grasping effort of a creditor to enforce his collection by showing the jail door to his debtor. The record shows a suit commenced in *Peoria county* by a writ of *capias* to *Cook county*; but how much of hope there was treasured by the plaintiff, that the prospect of being brought to Peoria would compel the debtor to pay or secure the claim, of course is not made to appear.

Is it unfair, then, or unjust, to say to the plaintiff that, having thus sought to enforce payment, he must show a *strict and full compliance* with the statute under which he proceeds? That the bond sued on does not comply with the form prescribed, in this: *that it does not set forth and show who are the special bail*, and therefore is void; and judgment must pass for the defendant in error, in this court, as in the court below?

WILLIAM W. ORME,  
*For Defendant in Error.*

No. 185

Neil vs Morgan  
Brief of depts in Error

Filed May 2, 1842  
J Selman  
Clerk

STATE OF ILLINOIS,  
Supreme Court, Third Grand Division.

OTTAWA, APRIL TERM, 1862.

JAMES NEIL  
—vs—  
RICHARD P. MORGAN ET AL. } ERROR TO MCLEAN.

Brief and Argument on behalf of Defendant in Error.

The only point presented on this record arises by demurrer to the declaration.

The demurrer craves oyer of, and sets out, the bond sued on.

The bond is taken by the sheriff of Cook county, by virtue of a *capias ad resp.*, issued by the clerk of the circuit court of Peoria county, under section 3d of chapter entitled "*Capias*," of Scates' Statutes, p. 237.

The declaration in the case at bar is against *Richard P. Morgan, Sidney S. Morgan, and Peter W. Peckham*; but the bond no where in its body or condition names any person but Richard P. Morgan. It begins, "Know all men, &c., that we, Richard P. Morgan, of, &c., are held and bound unto John L. Wilson," &c. And the condition is: "Now, if said Richard P. Morgan shall be and appear at the said court, to be held at Peoria, aforesaid, on, &c.; and in case the said ——— shall not be received," &c. And thus all through the condition no other name, except Richard P. Morgan's is mentioned.

For a full copy of the bond, your Honors are referred to the plaintiff's abstract, (p. 1 & 2.)

The statute (sec. 3, aforesaid) is imperative that the name or names of the bail shall be set out. It says:

"And for the purpose of avoiding errors in the taking thereof, the condition shall be substantially in the following form."

And in the form given in the section the name of the bail is to be inserted as indicated by the letters "E," "F."

The spirit of our constitution and laws is adverse to the system of imprisonment and bail; and when a person claims any benefit under the section referred to, it is but just that he should show a strict compliance with the requirements of the statute.

As a general rule it has been held that *material* errors and omissions in a bail bond would vitiate it.

In *Adams vs. Hedgepeth*, (5 Jones N. C. Law Rept's, p. 327,) exactly the same point now raised in the case at bar was directly presented, and, on full argument, the bond was adjudged to be void, and the bail discharged.

In 2d Bailey, (So. Car., *Perry vs. Dobbin*, p. 343,) it was held that a bail bond, with a blank condition, was void.

So in Tidd's Practice, (vol. 1, p. 225, marginal,) it is said a bail bond "is void, if executed before the condition is filled up."

And the same, in 3 Camp., p. 181.

But in this State the statute gives the form of the condition, and the name of the bail is a material and essential part of it—appearing in two different places in the prescribed form.

In *Barnard vs. Viele*, (21 Wendell, p. 89,) it was decided that *bail bond must be in the terms prescribed by the statute, or it will be void.* And that case is a very strong one in support of the position I am urging.

A bond returned to the clerk's office, specifying no sum to be paid by the obligor, is void.

HARRISON vs. TIERNANS, 4 Rand., 177.

And yet if a blank can be sustained in one material part of a bond, to be filled by averments in a declaration, why not in any other part?

A bail bond taken to the plaintiff, instead of the sheriff, is void.

HANDLY vs. EWINGS, 4 Bibb, 503.

And why? Because it is not a compliance with the statute. It is insisted that only by a strict and literal compliance with the statute can the creditor obtain the benefit of the bail bond, for the whole proceeding is statutory:

"All bail taken according to the directions of this chapter shall be deemed and taken as special bail, &c.

Sec 4. of Chap. on Capias.

The authorities presented on behalf of plaintiff in error are but few of them to the point.

The case, in 9 Watts, 43, is decided on the ground that the matter of misdescription was not necessary matter in the condition, and also that the bond did substantially recite the action, &c.

4 Halstead, 97, decides a very different case from one at bar, and decides it upon a principle adverse to the point made by plaintiff. There was a motion by bail to be discharged, on the ground of variance between the writ and declaration. They were discharged, and it was said, "*Courts of justice suffer slight variances to be taken advantage of in this way.*"

Hardin, 501, was decided on the ground that the Kentucky statute prescribed no particular form to be pursued in drawing the bond.

4 Leigh, 276. This case is more in point than the others cited, and one point presented is similar to the case at bar; but the question arose collaterally between different parties than the bail and the creditor, and *after judgment had been obtained by default against the bail*—they making no objection at all—the objection being made by other parties.

An enlightened system of jurisprudence has already frowned upon the facility with which arrests and imprisonments for debt have been made; and the courts by a construction reaching the true spirit of our Constitution and the laws, and by the wholesome application of the rigid rules of the common law, in favor of the liberty of the citizen, have almost entirely purged the statute under consideration, of its license to abuse.

The case at bar discloses the grasping effort of a creditor to enforce his collection by showing the jail door to his debtor. The record shows a suit commenced in *Peoria county by a writ of capias to Cook county*; but how much of hope there was treasured by the plaintiff, that the prospect of being brought to Peoria would compel the debtor to pay or secure the claim, of course is not made to appear.

Is it unfair, then, or unjust, to say to the plaintiff that, having thus sought to enforce payment, he must show a *strict and full compliance* with the statute under which he proceeds? That the bond sued on does not comply with the form prescribed, in this: *that it does not set forth and show who are the special bail*, and therefore is void; and judgment must pass for the defendant in error, in this court, as in the court below?

WILLIAM W. ORME,  
*For Defendant in Error.*

No. 185 —

Neil vs. Morgan

Brief of deft. in Error

Filed May 2, 1862

J. Selman  
clerk

IN THE SUPREME COURT OF THE STATE OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM, 1862.

JAMES NEIL,  
*vs.*  
RICHARD P. MORGAN, SIDNEY S. MORGAN,  
PETER W. PECKHAM. } ERROR TO MCLEAN.

Page of  
Record.

This was an action of debt, commenced in the Circuit Court of Peoria County, upon a bail bond, which said bond is as follows :

11 "Know all men by these presents, that we, Richard P. Morgan, of the County of Cook and State of Illinois, are held and firmly bound unto John L. Wilson, Sheriff of Cook County, in the State of Illinois, in the sum of four thousand dollars, lawful money of the United States, for the payment of which, well and truly to be made, to the said John L. Wilson, Sheriff as aforesaid, or his successors in office, executors, administrators or assigns, we hereby jointly and severally bind ourselves, our heirs, executors and administrators. Witness our hands and seals, this 17th day of April, eighteen hundred and fifty-seven.

The condition of this bond is such, that whereas, James Neil has lately sued out of the Circuit Court of Peoria County a certain writ of *capias ad respondendum*, in a certain plea of trespass on the case on promises, against Richard P. Morgan, returnable to the next term of the said Court, to be held at Peoria, in Peoria County, on the second Monday of May next.

12 Now if the said Richard P. Morgan shall be and appear at the said Court, to be held at Peoria aforesaid, on the said second Monday of May next; and in case the said 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 being accepted as bail shall pay and satisfy the costs and condemnation money which may be

rendered against the said Richard P. Morgan in the plea aforesaid, or surrender the body of the said Richard P. Morgan in execution in case the said Richard P. Morgan shall not pay and satisfy the said costs and condemnation money, or surrender himself in execution where by law such surrender is required, then this obligation to be void, otherwise to remain in full force and effect.”

RICHARD P. MORGAN,  
S. S. MORGAN,  
P. W. PECKHAM.

Filed Nov. 8, 1858.—ENOCH P. SLOAN, Clerk.

1-10 The declaration in the cause was upon this bond, and the same as amended is as follows :

IN THE CIRCUIT COURT OF PEORIA COUNTY, }  
NOVEMBER TERM, A. D. 1858. }

STATE OF ILLINOIS, }  
PEORIA COUNTY. } James Neil, plaintiff in this suit, complains of Richard P. Morgan, Sidney S. Morgan and Peter W. Peckham, defendants in this suit, of a plea that they the said defendants render to the said plaintiff the sum of four thousand dollars, which they owe to and unjustly detain from him, the said plaintiff.

1-10 For that whereas, heretofore, to wit: on the seventh day of March, in the year of our Lord one thousand eight hundred and fifty-seven, at the County of Peoria aforesaid, the said plaintiff then and there sued out of the office of the Clerk of the Circuit Court of Peoria County a certain writ of *capias ad respondendum* against the body of the said defendant Richard P. Morgan, which said writ was then and there directed to and delivered to the Sheriff of the County of Cook in said State to serve and execute according.

By which said writ the said Sheriff of Cook County was then and there required and commanded to take the body of the said Richard P. Morgan and him safely keep until he should have given him (said Sheriff) bail, according to law, or until he should be otherwise discharged from his (said Sheriff's) custody; and that he should have the body of the said Richard P. Morgan before the Circuit Court of Peoria County aforesaid, on the first day of the term thereof to be held at Peoria, within and for the said County of Peoria, on the second Monday of May then next after the date of said writ, to answer unto the said James Neil of a plea of trespass on the case on promises, to his damage two thousand dollars, and that he (the said Sheriff) should make return of the said writ, with his indorsement of the time and manner of serving the same, on or before the first day of the term of the said court to be held as aforesaid, as by the said writ now on file in the office of the Clerk of the said Court will more fully and at large appear.

And the said plaintiff avers that on the 17th day of April, A. D. 1857, at the

County of Cook aforesaid, to wit: at the County of Peoria aforesaid, by virtue of the writ aforesaid, the same being then and there in full force and effect, the said Sheriff did then and there take and arrest the said defendant Richard P. Morgan, and then and there held him in custody, according to the mandate of said writ.

And thereupon the said defendants, for the purpose of procuring the release and discharge of the said defendant Richard P. Morgan from such custody and imprisonment, then and there on the same day and year last aforesaid, at the County aforesaid, made and executed their certain bond or writing obligatory, signed with their hands and sealed with their seals, which said writing obligatory is now to the Court here shown, the date whereof was the day and year last aforesaid, and then and there acknowledged themselves to be held and firmly bound  
 1-10 unto John L. Wilson, Sheriff of the said County of Cook, in the sum of four thousand dollars, lawful money of the United States, to be paid to the said John L. Wilson, Sheriff as aforesaid, or his successor in office, executors, administrators or assigns, with the conditions thereunder written, that whereas, James Neil, the plaintiff, had lately sued out of the Circuit Court of Peoria County a certain writ of *capias ad respondendum* in a plea of trespass on the case on promises against Richard P. Morgan, returnable to the next term of the said Court to be held at Peoria, in Peoria County, on the second Monday of May then next. That if the said Richard P. Morgan should be and appear at the said Court, to be held at Peoria aforesaid, on the said second Monday of May then next, and that if the said( ) (meaning the said defendants Sidney S. Morgan and Peter W. Peckham,) should not be received as bail in the said action, that he, the said defendant Morgan, should put in good and sufficient bail, which should be received by the plaintiff or should be adjudged sufficient by the Court, or that the said ( ) (meaning the said defendants Sidney S. Morgan and Peter W. Peckham,) being accepted as bail, should pay or satisfy the costs and condemnation money which should be rendered against the said Richard P. Morgan in the plea aforesaid, or should surrender the body of the said Richard P. Morgan in execution in case the said Richard P. Morgan should not pay and satisfy the said costs and condemnation money, or surrender himself in execution when by law such surrender should be required, that then the said obligation should be void, otherwise that the same should remain in full force and effect; which said writing obligatory was then and there duly delivered to the said Sheriff of Cook County.

AMENDMENT TO DECLARATION, FILED APRIL 11, 1860.

(And the said plaintiff avers that the names of the sureties, Sidney S. Morgan and Peter W. Peckham, were by accident and mistake omitted to be inserted in the body of the said bond, but the said plaintiff distinctly avers that they signed and executed the same as such security, and as Special Bail for the said Morgan, in the suit of the said James Neill vs Richard P. Morgan aforesaid.)

And afterwards, to wit: on the 17th day of April, A. D. 1857, at the County of Peoria aforesaid, together with his writ herein before recited or mentioned, duly returned and filed in the office of the Clerk of the Circuit Court of Peoria County.

And the said plaintiff avers that upon the delivery of the said bond or writing obligatory to the said Sheriff of Cook County, the said Richard P. Morgan was in due form of law discharged from the arrest and custody of the said Sheriff, as 1-10 by the said writ and the said Sheriff's return thereon, on file in the office of the Clerk of the Circuit Court of Peoria County, will fully appear.

And the said plaintiff further avers that afterwards, to wit: at the November term of the Circuit Court of Peoria County, A. D. 1857, and on the 19th day of November aforesaid, such proceedings were had in the Circuit Court of said County, in the said suit of the said plaintiff against the said defendant Richard P. Morgan, that by the consideration and judgment of said Court, a judgment was rendered in said suit in favor of the said plaintiff against the said Richard P. Morgan for the sum of ten hundred and thirty-four dollars and forty cents damages, and six dollars and seventy cents costs of suit, which said judgment still remains in full force and effect, and in no manner reversed, set aside or annulled, paid or otherwise discharged, as by the records and proceedings in said cause will fully appear.

And the said plaintiff further avers that afterwards, to wit: on the 2d day of July, A. D. 1858, such further proceedings were had in said suit of the said plaintiff against the said Richard P. Morgan that an execution commonly called a *feri facias* execution was issued out of the office of the Clerk of the Circuit Court of said County, upon the said judgment against the said Richard P. Morgan, directed to the Sheriff of Cook County, which said execution was then and there duly delivered to the said Sheriff to serve and execute according to law, and in and by the said writ the said Sheriff was then and there commanded that of the goods and chattels, lands and tenements of the said Richard P. Morgan he should cause to be made the damages and costs aforesaid, and interest at the rate of six per cent. per annum from the time of the recovering of the same, as by the said execution now on file in the office of the said Clerk of the Circuit Court of Peoria County will fully and at large appear.

And the said plaintiff further avers that within the lifetime of the said execution the said Sheriff presented the same to the said Richard P. Morgan, and then and there demanded payment thereof, or that the said Richard P. Morgan should surrender property out of which payment and satisfaction of the said execution could be made; which the said Richard P. Morgan then and there wholly refused to do, as by the return of the said Sheriff upon the said execution will fully and at large appear.

1-10 And the said plaintiff further avers that the said Richard P. Morgan, having thus failed and refused to pay the amount of the said execution, and to turn out any property in satisfaction of the same, the said plaintiff did, on the 12th day of October, A. D. 1858, in due form of law, apply to the Clerk of the Circuit Court of Peoria County for a *capias ad satisfaciendum* upon said judgment against the said defendants, and he having filed the proper and legal affidavit in the premises, the said Clerk did, on the day and year last aforesaid, at the County of Peoria aforesaid, issue in due form of law a *capias ad satisfaciendum* against the said defendant Richard P. Morgan, to the Sheriff of the said County of Cook, which said writ was delivered to and executed by the said Sheriff on the 14th day of October, A. D. 1858, and which said writ was in due form of law, on the 27th day of the same month, returned by said Sheriff that the said defendant Richard P. Morgan was not found in his county.

And the said plaintiff avers that at the time said *capias ad satisfaciendum* was issued, and from thence until long after its return, the said Richard P. Morgan had left and removed from the State of Illinois, and had removed his property and personal effects therefrom, and had become a resident of another State.

And the said plaintiff further avers that the said Richard P. Morgan, nor the said Sidney S. Morgan, nor Peter W. Peckham, did not nor would they at any time pay or satisfy the costs and consideration money and interest rendered and accruing against the said Richard P. Morgan in the plea aforesaid, nor any part thereof; nor did the said Richard P. Morgan surrender himself, nor the said Sidney S. Morgan, nor Peter W. Peckham, defendants aforesaid, surrender the said Richard P. Morgan in execution when by law such surrender was required in manner and form aforesaid; but to do so neglected and refused, and the said judgment, damages, interest and costs still remain wholly due and unpaid.

By reason whereof, an action hath accrued to the said plaintiff to have and demand of the said defendants the said sum of four thousand dollars above demanded.

Yet the defendants, although often requested, have not paid the same nor any part thereof, to the damage of the said plaintiff two thousand dollars, and therefore they bring suit, &c.

N. H. PURPLE, Pl'ff's Att'y.

17-19 A default was entered in the Peoria Circuit Court against Richard P. and Sidney S. Morgan and P. W. Peckham, which was afterwards set aside as to Peckham, who applied for a change of venue, which was granted and the venue was changed to McLean County.

Several pleas were filed by Peckham, which it is not important to notice.

27 On the 11th April, 1860, the plaintiff amended his declaration, as shown in the  
27-29 same: and thereupon the defendant craved Oyer of the Bond, and demurred to  
the amended declaration. The Court sustained the demurrer, and the plaintiff  
31 abiding by his declaration, the Court rendered judgment for the defendant.

The errors assigned are:

1. That the Court erred in sustaining the defendant's demurrer to the plaintiff's declaration.
2. In rendering judgment for defendant on sustaining said demurrer.

N. H. PURPLE, Pl'ff's Att'y.

JAMES NEIL,  
*vs.*  
RICHARD P. MORGAN AND OTHERS. }

IN SUPREME COURT,  
OTTAWA,  
APRIL TERM, 1862.

BRIEF, POINTS AND AUTHORITIES.

1st. The bond in this case is a good bond as against the securities, notwithstanding their names are omitted in the body of the bond.

It has often been decided that a bail bond is good, though the Sheriff takes one security only when by law two are required.

Long v. Billings, 9 Mass., 482.

Rice et al. v. Hosmer, 12 Mass., 129.

Lane v. Smith, 2 Pick., 284.

Ball v. Clark, 2 Met., 587.

Also, that a mistake in the plaintiff's name, or a misrecital of the debt demanded by the writ, does not vitiate the bond.

Colburn v. Downs, 10th Mass., 20.

McLeanred v. Lillard, 1 Bibb, 146.

2d. The authorities clearly indicate that when a party signs a bond as security for another he is bound by its conditions, notwithstanding technical inaccuracies or defective descriptions in the body, or in the reciting portions of the bond.

Rolston v. Love, Hardin, 501.

Payne v. Britton, 6th Rand., 101.

Robison v. Thompson, 4th Hals., 97.

Carter v. Cockerell, 2 Murry, 448.

Kelly v. Commonwealth, 9 Watts, 43.

X Reynolds v. Gove, 4 Leigh, 276.

N. H. PURPLE, Att'y for Pl'ff in Error.

185  
Neil  
Morgan Esq

Abstract  
Brief Points

Filed & fee  
Paid \$10.00  
1862  
S. Ireland  
Clerk

BRIEF POINTS AND AFFIDAVITS.

REDACTED BY MORGAN AND OTHERS }  
JAMES ZEHL }  
IN SUPREME COURT,  
JANUARY TERM, 1862.

Z. H. BURBANK, ATTORNEY AT LAW, IN CHARGE.

*Robinson v. Cook*, 4 Pickp. 330.  
*Robinson v. Cook*, 2 Mass. 412.  
*Robinson v. Thompson*, 40 Mass. 37.  
*Robinson v. Burt*, 40 Mass. 101.  
*Robinson v. Cook*, 40 Mass. 301.

as to the authorities generally, indicate that when a party signs a bond as security for another he is bound by its conditions, notwithstanding technical inaccuracies or defects in the description in the body, or in the reciting portions of the bond.

omitted in the body of the bond. The authorities generally, indicate that when a party signs a bond as security for another he is bound by its conditions, notwithstanding technical inaccuracies or defects in the description in the body, or in the reciting portions of the bond.

1  
Pleas continued and held at the Court house in  
Bloomington in and for the County of McLean before  
the Hon. David Davis Judge of the Circuit Court  
of the Eight Judicial Circuit of the State of Ill.  
inois in a certain action wherein James Neill was  
plaintiff and Richard S. Morgan & others were  
Defendants.

State of Illinois }  
McLean County. } p. Be it remembered that heretofore  
to wit: on the 5<sup>th</sup> day of April A. D. 1859 came  
Enoch S. Sloan, Clerk of the Circuit Court of  
Peoria County & filed in the office of the Clerk of  
the Circuit Court of said County of McLean certain  
papers lately filed in the office of the Clerk of the  
Circuit Court of Peoria County in a certain cause  
wherein James Neill was Plaintiff & Richard  
S. Morgan & others were defendants, among which  
papers were the following, to wit:

Declaration, Praecipe & Copy of Instrument sued on.

In the Circuit Court of Peoria County, November  
Term A. D. 1858.

State of Illinois }  
Peoria County. } James Neill Plaintiff in this  
suit complains of Richard S. Morgan, Sidney S.

2

Morgan and Peter W. Beckham Defendants in this suit of a Plea that they the said Defendants render to the said Plaintiff the sum of Four thousand dollars which they owe to and unjustly detain from him the said Plaintiff:

For that whereas heretofore to wit: on the Seventh day of March in the year of our Lord One thousand Eight hundred and Fifty seven, at the County of Peoria aforesaid, the said Plaintiff then and there sent out of the Office of the Clerk of the Circuit Court of Peoria County a certain writ of capias ad respondendum against the body of the said defendant Richard P. Morgan which said writ, was then and there directed to and delivered to the Sheriff of the County of Cook in said State to serve and execute according, - By which said writ the said Sheriff of Cook County was then and there required and commanded to take the body of the said Richard P. Morgan and him safely keep until he should have given him said Sheriff Bail, according to law, or until he should be otherwise discharged from his said Sheriff custody, and that he should have the body of the said Richard P. Morgan before the Circuit Court of Peoria County aforesaid on the first day of the term thereof to be held at

3

Peoria within and for the said County of Peoria on the second Monday of May then next after the date of said writ, to answer unto the said James Neil of a plea of Trespass on the Case on pro, miss to his damages two thousand dollars that he the said Sheriff should make return of the said writ with his indorsement of the time and manner of serving the same, on or before the first day of the term of the said Court to be held as aforesaid, as by the said writ now on file in the office of the Clerk of the said Court will more fully and at large appear.

And the said Plaintiff avers that on the seventeenth day of April A.D. 1857 at the County of Cook aforesaid, to wit: at the County of Peoria aforesaid by virtue of the writ aforesaid, the same being then and there in full force and effect, the said Sheriff did then and there take and arrest the said Defendant Richard P. Morgan and then and there held him in custody according to the mandate of the said writ:

And thereupon the said Defendants for the purpose of procuring the release and discharge of the said Defendant Richard P. Morgan from such custody and imprisonment.

Then and there on the same day and year last

aforesaid, at the County aforesaid made and executed their certain Bond or writing obligatory signed with their hands and sealed with their seals which said writing obligatory is now to the Court here shown, the date whereof was the day and year last aforesaid - and then and there acknowledged themselves to be held and firmly bound unto John L. Wilson Sheriff of the said County of Cook in the sum of Four thousand dollars lawful money of the United States to be paid to the said John L. Wilson Sheriff as aforesaid or his successors in office executors, administrators or assigns - with the conditions thereunto written that whereas James Neil the plaintiff had lately sued out of the Circuit Court of Peoria County a certain writ of capias ad respondendum in a certain Plea of trespass on the Case on promises against Richard P. Morgan, returnable to the next term of the said Court to be held at Peoria in Peoria County on the second Monday of May then next, - That if the said Richard P. Morgan should be and appear at the said Court to be held at Peoria aforesaid on the said second Monday of May, then next and that if the said ( ) meaning the said Defendants

5 Sidney S. Morgan & Peter W. Peckham should not be received as bail in the said action, that he the said Defendant Morgan should put in good and sufficient bail which should be received by the Plaintiff or should be adjudged sufficient by the Court; or that the said (meaning the said Defendants Sidney S. Morgan and Peter W. Peckham) being accepted as bail, should pay or satisfy the costs and Condemnation money which should be rendered against the said Richard S. Morgan in the Plea aforesaid, or should surrender the body of the said Richard S. Morgan in Execution in case the said Richard S. Morgan should not pay and satisfy the said costs and Condemnation money or surrender himself in execution, when by law such surrender should be required, that then the said obligation should be void, otherwise that the same should remain in full force and effects, which said writing obligatory was then and there duly delivered to the said Sheriff of Cook County.

Amendment to Declaration filed April 11. 1860.

And the said Plaintiff avers that the names of the securities Sidney S. Morgan and Peter S. Peckham even by accident and mistake omitted to be inserted in the body of the said bond, but the said Plaintiff distinctly avers that <sup>they</sup> signed

C and executed the same as such security and as Special Bail for said Morgan in the suit of the said James Neil vs Richard P. Morgan aforesaid. And afterwards to wit on the 17<sup>th</sup> day of April A.D. 1857 at the County of Peoria aforesaid, together with his writ herein before recited or mentioned, duly returned and filed in the office of the Clerk of the Circuit Court of Peoria County.

And the said Plaintiff avers that upon the delivery of the said Bond or writing obligatory to the said Sheriff of Cook County, the said Richard P. Morgan was in due form of law discharged from the arrest and custody of the said Sheriff, as by the said writ and the said Sheriff's return thereon file in the Office of the Clerk of the Circuit Court of Peoria County will fully appear.

And the said Plaintiff further avers that afterwards to wit at the November Term of the Circuit Court of Peoria County A.D. 1857, and on the 19<sup>th</sup> day of November aforesaid such proceedings were had in the Circuit Court of said County in the said suit of the said Plaintiff against the said Defendant Richard P. Morgan that by the consideration and judgment of said Court a Judgment was rendered in said Suit in favor

7 of the said Plaintiff against the said Richard P. Morgan for the sum of Ten hundred and thirty four Dollars and forty Cents damages, and six dollars and seventy Cents costs of suit, which said Judgment still remains in full force and effect and in no manner reversed, set aside or annulled, paid or otherwise discharged, as by the Records and proceedings in said Cause will fully appear.

And the said Plaintiff further avers that afterwards to wit: on the 2<sup>nd</sup> day of July A.D. 1858 such further proceedings were had in said suit of the said Plaintiff, against the said Richard P. Morgan that an Execution commonly called a fieri facias Execution was issued and of the office of the Clerk of the Circuit Court of said County upon the said judgment against the said Richard P. Morgan, directed to the Sheriff of Cook County which said Execution was then and there duly delivered to the said Sheriff to serve and execute according to law and in and by the said writ the said Sheriff was then and there commanded that of the goods and Chattels, lands and tenements of the said Richard P. Morgan he should cause to be made the damages & costs aforesaid and interest at the

8  
rate of six per cent per annum from the time  
of the recording of the same as by the said execu-  
tion now on file in the Office of the said  
Clerk of the Circuit Court of Toria County will  
fully and at large appear. - And the said  
Plaintiff further avers that within the life time  
of the said Execution the said Sheriff presented  
the same to the said Richard S. Morgan & then  
and there demanded payment thereof or that  
the said Richard S. Morgan should surrender  
property out of which payment and satisfaction  
of the said Execution could be made, which the  
said Richard S. Morgan then and there wholly  
refused to do, as by the return of the said Sheriff  
upon the said Execution, will fully and at  
large appear.

And the said Plaintiff further avers, that  
the said Richard S. Morgan having thus failed  
and refused to pay the amount of the said  
execution and to turn out any property in  
satisfaction of the same. The said Plaintiff  
did on the 12<sup>th</sup> day of October A.D. 1858, in  
due form of law apply to the Clerk of the Cir-  
cuit Court of Toria County for a Capias ad  
satisfaciendum upon said Judgment against

9

the said Defendants, and he having filed the proper and legal affidavit in the premises, the said Clerk did on the day and year last aforesaid at the County of Tioria aforesaid issue in due form of law a capias ad satisfaciendum against the said Defendant Richard P. Morgan to the Sheriff of the said County of Cook, which said writ was delivered to and executed by the said Sheriff on the 14<sup>th</sup> day of October A.D. 1858, and which said writ was in due form of law on the 27<sup>th</sup> day of the same month returned by said Sheriff that the said Defendant Richard P. Morgan was not found in his County and the said Plaintiff avers that at the time said Capias ad satisfaciendum was issued and from thence until long after its return the said Richard P. Morgan had left, and removed from the state of Illinois, and had removed his property and personal effects therefrom, and had become a resident of another State.

And the said Plaintiff further avers that the said Richard P. Morgan, nor the said Sidney S. Morgan nor Peter W. Peckham did not nor would they at any time pay or satisfy the costs and consideration money & interest rendered

and accruing against the said Richard P. Morgan in the Plea aforesaid nor any part thereof, - nor did the said Richard P. Morgan surrender himself, nor the said Sidney S. Morgan nor Peter W. Peckham defendants aforesaid, surrender the said Richard P. Morgan in execution, when by law such surrender was required in manner & form aforesaid. But to do so neglected and refused, and the said Judgment, Damages interest & costs still remains wholly due and unpaid.

By reason whereof an action hath accrued to the said Plaintiff, to have and demand of the said Defendants the said sum of Four thousand dollars above demanded.

Yet the Defendants although often requested have not paid the same nor any part thereof to the damage of the said Plaintiff two Thousand Dollars and therefore they bring suit &c

James Neil

N. H. Purple

Plffs Atty.

vs  
Richard P. Morgan  
Sidney S. Morgan  
Peter W. Peckham.

In Circuit Court of  
Terra County, November  
Term 1858.

11

Issue Summons in Debt to Sheriffs of Cook and Will Counties to next Term.

Debt . . . . \$4000.00

Damages . . . . 2000.00.

E. P. Sloan Esq.

Clerk, -

Nov. 8. 1858.

N. H. Peopple

Plffs Atty.



Know all men by these presents that we Richard P. Morgan, of County of Cook and State of Illinois are held and firmly bound unto John L. Wilson, Sheriff of Cook County in the State of Illinois in the sum of four Thousand and Dollars lawful money of the United States for the payment of which sum well and truly to be paid made to the said John L. Wilson Sheriff as aforesaid or his successors in office, executors, administrators or assigns we hereby justly and severally bind ourselves our heirs executors and administrators Witness our hands and seals this seventeenth Day of April Eighteen hundred and fifty seven.

The Condition of this bond is such that whereas James Mill has lately paid out of the

Circuit Court of Teoria County a certain writ of Capias ad Respondum in a certain plea of trespass on the case on premises against Richard P. Morgan, returnable to the next term of the said Court to be held at Teoria in Teoria County on the second Monday of May next. Now if the said Richard P. Morgan shall be and appear at the said Court to be held at Teoria aforesaid on the said second Monday of May next and in case the said - 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 - being accepted as bail shall pay or satisfy the Costs and Condemnation money which may be rendered against the said Richard P. Morgan in the plea aforesaid, or surrender the body of the said Richard P. Morgan in execution in case the said Richard P. Morgan 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.

4.  
13 In presence of } Richard P. Morgan  
                              } L. S. Morgan  
Filed Nov. 8. 1858. (P. W. Peckham.  
Enoch P. Sloan (Ck.)  
Summons to Hill County.

The People of the State of Illinois  
To the Sheriff of Hill County - Greeting:  
We Command you to Summon Richard P.  
Morgan, Sidney S. Morgan and Peter W. Peck,  
here if they may be found in your County, to ap-  
pear before our Circuit Court on the first day of  
the term thereof, to be held at Peoria, within and  
for the said County of Peoria, on the third Monday  
day of November instant then and there, in our  
said Court, to answer unto James Niel of a  
plea that they render unto him the sum of  
Four Thousand Dollars, which they owe to and  
unjustly detain from him to his Damage Two  
Thousand Dollars as he says, - and make return  
of this writ with an endorsement of the time and  
manner of serving the same, on or before the first  
day of the term of the said Court to be held as  
aforesaid.

Witness, Enoch P. Sloan, clerk of our said  
Court, and the seal thereof, at Peoria, this Eight

14 day of November in the year of our Lord one  
thousand eight hundred and fifty eight  
(L.S.) Enoch P. Sloan, Clerk  
R.A.

I have served this summons by reading the  
same to the within named Sidney S. Morgan  
this 10<sup>th</sup> day of November A.D. 1858.

G. R. Dyer, Shff

fees: Ferrice - 50

40 miles 2.00

Ret. .10.

\$ 2.60 Paid by Plff. atty.

Richard P. Morgan + Peter W. Peckham  
not found in my County this 10<sup>th</sup> day of Nov.  
1858.

G. R. Dyer Shff.

Summons to Cook County.

The People of the State of Illinois

To the Sheriff of Cook County - Greeting:

We Command you to Summon Richard P. Mor-  
gan, Sidney S. Morgan and Peter W. Peckham  
if they may be found in your County, to appear  
before our Circuit Court on the first day of the  
Term thereof, to be held at Peoria, within and  
for the said County of Peoria, on the third

15 Monday of November instant then and there,  
in our said Court, to answer unto James Niel  
of a plea that they render unto him the sum  
of Four Thousand Dollars which they owe to  
and unjustly detain from him to the Damage  
Two Thousand Dollars as he says, and make  
return of this writ with an endorsement of the  
time and manner of serving the same, on or  
before the first day of the term of the said Court  
to be held as aforesaid.

Witness, Enoch P. Sloan, clerk of our said  
Court, and the seal thereof, at Peoria, this Eight  
day of November in the year of our Lord one  
Thousand eight hundred and fifty Eight.  
(L.S.) Enoch P. Sloan, Clerk  
R.H.

Served by reading to the within named Defendants  
Richard P. Morgan & Peter W. Peckham this  
11<sup>th</sup> of November 1858, the other Defendants not  
found in my County.

F. Service 1.00.

21 10

1 Retn. 10

\$ 1.20.

John L. Wilson, Shff. of Cook County.

By George Anderson, Deputy.

Transcript from Peoria County

Proceedings at a term of the Circuit Court began and held at the Court house in the city of Peoria, in and for the County of Peoria in the state of Illinois, on the first Monday of March, in the year of our Lord one thousand eight hundred and fifty-nine, it being the seventh day of said month Present, - the Honorable Elisha N. Powell, judge of the 16<sup>th</sup> judicial circuit in the state of Illinois, John Bryner, Sheriff and Enoch P. Sloan Clerk, to wit:

Thursday, March 10<sup>th</sup> A.D. 1859

James Niel

vs

Debt.

Richard P. Morgan

Sidney S. Morgan

Peter W. Peckham

This day came the plaintiff by Purple his attorney, and the defendants though three times solemnly called came not but made default, whereupon it is considered by the court that the said plaintiff ought to recover of the said defendants his debt, and also his damages by him sustained by reason of the premises.

17 Monday, March 14<sup>th</sup> A.D. 1859

James Niel

vs

Richard P. Morgan

Sidney S. Morgan

Peter W. Peckham

Debt.

This day came the plaintiff by Purple his attorney and default having here, before been entered against said defendants, and the Court being satisfied in the premises do find that the said defendants doth owe to the said plaintiff the sum of four thousand dollars, and do assess his damages by reason of the detension thereof to Eleven hundred and twenty six dollars and twenty five cents. Therefore it is considered that the said James Niel recover of the said Richard P. Morgan, Sidney S. Morgan and Peter W. Peckham, the said sum of four thousand dollars his debt aforesaid: and it is further ordered that execution issues herein against the said Richard P. Morgan, Sidney S. Morgan and Peter W. Peckham for the sum of eleven hundred and twenty six dollars and twenty five cents, the damages aforesaid by the Court assessed, and also for said plaintiff's costs and charges by him about his suit in this behalf.

18 pending.

Monday, March 21. A.D. 1859.

James Neil

vs

Richard P. Morgan

Sidney S. Morgan.

Peter W. Peckham.

Debt.

This day came the defendants by Manning their attorney, and moved the Court to set aside the default taken herein, for reasons set out in affidavit.

Thursday, March 24. A.D. 1859

James Neil

vs

Richard P. Morgan

Sidney S. Morgan

Peter W. Peckham

Debt.

This day this cause came on to be heard on the motion of defendants to set aside default, and the Court being fully advised in the premises do order said default to be set aside as to the said Peter W. Peckham and that said Peckham pay all the costs of this suit up to this date. Therefore it is considered that the said James Neil, have and recover of the

19

said Peter W. Peckham his costs and charges by him about his suit in this behalf expended to this date, and that he have execution therefor.

The said defendants by their attorney, then exhibited to the court their affidavit, praying that a change of venue may be awarded in this cause, and it being agreed by the parties that the said affidavit is sufficient, it is ordered that the venue in this cause be changed to McLean County in this state. Therefore it is ordered that the Clerk of this Court transmit to the Clerk of the Circuit Court of McLean County all the papers filed in this cause, together with a full transcript of the proceedings of this Court appertaining to said cause, duly certified.

State of Illinois } ss.

Pioria County . }

I, Enoch P. Sloan, clerk of the Circuit Court in and for said County and State do certify that the foregoing is a full and true transcript of the proceedings in said Court appertaining to the cause wherein James Neil is plaintiff and Richard P. Morgan et al are defendants as the same appears of record in my office, and that the papers herewith sent, numbered 1, 2, 3, 4, 5, 6, 7 are all the papers filed in

said Court.

Given under my hand and the seal of said Court at Peoria this 26<sup>th</sup> day of March A.D. 1859.  
(L. S.) Enoch S. Sloan Clerk

And afterwards on said 5<sup>th</sup> day of April A.D. 1859 came Peter W. Peckham one of the Defendants herein by his attorneys and files in this cause his Pleas to the said Plaintiffs Declaration in words and figures as follows, to wit:

In the Peoria Circuit Court

James Neil	} of The February Term A.D. 1859 Debt.
vs	
Richard P. Morgan	
Sidney S. Morgan & Peter W. Peckham.	

1., And the said Defendant Peter W. Peckham impleaded &c by Burgess & Hawley his attorneys come and defend the wrong and injury where &c, and say that he implead &c does not own and is not indebted unto the said Plaintiff in manner and form as the said Plaintiff hath above thereof declared against him - and of this he implead &c puts himself upon the

Country &c.

21

2. And for a further plea in this behalf said Defendant impleaded &c says actio non because he says that the said supposed bond in said declaration set forth is not his deed & of this he impleads himself upon the Country &c

3. And for a further plea in this behalf said Defendant impleaded & says actio non because he says, that the said writ of capias ad respondendum was issued without there having been an affidavit filed that the said Richard P. Morgan had refused to deliver up his estate for the benefit of his creditors in such manner as was prescribed by law, or that in that case there was strong presentation of fraud contrary to the form of the Constitution and the statutes of this State in such case made and provided and this he impleaded & is ready to verify, wherefore he impleads & prays judgment.

4. And for a further plea in this behalf said Defendant impleaded &c says actio non because he says that the said writ of capias ad respondendum was not issued in a case authorized by law and the arrest of said Richard P. Morgan

22

was illegal & he confirmed in custody of the said Sheriff contrary to the Constitution & law of this state in such case made and provided, and the execution of such bond obtained by means of such illegal arrest & confinement and this he impleaded & is ready to verify, wherefore he impleads & prays judgment.

5. And for a further plea in this behalf said Defendant impleads & says actio non, because he says that there is no such record of any recovery remaining of Record in this Court as in the said Declaration is alleged & supposed & this he is ready to verify, wherefore he prays judgment &c

6. And for a further plea in this behalf said defendant impleaded & says actio non because he says that no such writ of the people as a fieri facias against the said Richard J. Morgan upon the said supposed judgment was ever issued from and returned to said Court as in and by said Declaration is above alleged & supposed & of this he impleaded & puts himself upon the Country &c

Plff doth the like, Purple for Plff.

7. And for a further plea in this behalf said

23

Defendant impleaded says actio non because he says that no proper and legal affidavit was filed before issuing the said supposed writ of *capias ad satisfaciendum* upon the said supposed judgment as in and by the said Declaration is above supposed & of this he puts himself upon the Country &c.

P<sup>l</sup>ff doth the like.

Purple for P<sup>l</sup>ff.

8. And the said Defendant implead for a further plea in this behalf says actio non, because he says that the said supposed writ of *capias ad satisfaciendum* was not issued from said Court directed to said Sheriff & by him returned in manner & form as in & by said declaration is above alleged, & of this he implead & puts himself upon the Country.

P<sup>l</sup>ff doth the like Purple for P<sup>l</sup>ff.

9. And for a further plea in this behalf said Defendant impleaded says actio non because he says that there never was issued upon the said supposed judgment a writ of *Capias ad satisfaciendum* against the body of the said P<sup>l</sup>ct<sup>r</sup> Richard P. Morgan which ten days or upwards before the return day thereof was delivered to the Sheriff of the County of Cook, wherein said

24

Richard was arrested and to him directed to execute and remained in his hands until the return day & was by him returned & filed in the office of the Clerk of said Court - that the said Richard P. Morgan could not be found and this he impleaded & is ready to verify wherefore he implead. & prays judgment &c

Burgess & Hawley  
for Deft. Peckham.

10. And for a further plea in this behalf said Defendant impleaded & says actio non because he says that at the time of the issuing of said Capias ad satisfaciendum as in said Declaration mentioned and afterwards and during the life time thereof and while the same was in the hands of said Sheriff of Cook County the said Richard P. Morgan was in the said County of Cook of which the said plaintiff & the said Sheriff had a knowledge and that the said Sheriff of Cook County used no diligence to arrest & take the body of the said Richard P. Morgan and did not obey the command of said writ as by law he ought to have done & thus implead & is ready to verify wherefore he prays judgment &

Burgess & Hawley  
for Peckham.

25

And thereupon afterwards, at the regular April Term of the MSan Circuit Court, to wit: on the 5<sup>th</sup> day of April 1859, the following motion was made in this cause as appears of record, to wit:

James Neill	}	In Debt
vs Richard P. Morgan et al.		

This day comes said plain-  
teff by his attorneys, and here enters his motion  
to strike from the files of this cause the Demurror  
of Sidney S. Morgan filed herein.

And thereupon this Cause was continued to the  
December Term 1859, and at said December term,  
to wit: on the 2<sup>nd</sup> day of January 1860, the fol-  
lowing proceedings were had in this cause: as ap-  
pears of record, to wit:

James Neill	}	In Debt.
vs Richard P. Morgan & others		

And now at this day  
come the parties hereto by their Attorneys, and the  
Court having duly considered the motion herein  
before entered by said plaintiff to strike from the

files of this cause the Demurror of Sidney S. Morgan, and being fully advised in the premises doth order that said Demurror be stricken from the files of this cause and be wholly held for nought. And now Cometh the said plaintiff and enters his Demurror to the 1<sup>st</sup> and 10<sup>th</sup> pleas filed in this cause by said Defendants, and says that said 1<sup>st</sup> and 10<sup>th</sup> pleas are insufficient in law to bar his action against said Defendants, and this cause coming on to be heard on said Demurror is argued by Counsel, whereupon it is considered by the Court that said Demurror be carried back to the said plaintiff's Declaration, and the Court is of opinion that said plaintiff's Declaration, and the matters and things therein contained are not sufficient in law to maintain said plaintiff's action against said Defendants. And thereupon on motion, leave is granted said plaintiff by the Court to amend his said Declaration, and the same is amended here in open Court.

And afterwards at said December Term to wit: on the 24<sup>th</sup> day of January A.D. 1860, further proceedings were had in this cause as appears of record, to wit:

29

James Neill  
 vs  
 Richard P. Morgan & others } In Debt.

And now at this day again come the Defendants by their attorneys and here enter their Demurrer to said plaintiffs amended Declaration filed in this cause against them. And say that said amended Declaration and the matters and things therein contained are not sufficient in law to maintain said plaintiffs action against said Defendants.

And afterwards at the regular April Term of said Circuit Court, to wit: on the 11<sup>th</sup> day of April A.D. 1860, further order was made by said Court in this cause as appears of record, to wit:

James Neill  
 vs  
 Richard P. Morgan & others } In Debt.

This day, on motion of said plaintiff by his attorneys, leave is granted him by the Court to amend his Declaration filed herein. And this cause is continued at plaintiffs etc.

And thereupon afterwards, to wit: on the 25<sup>th</sup>

day of August A.D. 1860, came Peter W. Peck,  
 from, one of the Defendants herein by his attorneys  
 and filed in this cause his Demurrer to the amended  
 Declaration of said Plaintiff, which Demurrer was  
 in words and figures as follows, to wit:

In the Circuit Court of Peoria County.

vs. Airl

Debt.

Richard P. Morgan  
 Sidney S. Morgan  
 & Peter W. Peckham.

And the said Defendant Peter  
 W. Peckham by Swett & Orme his Attorney comes  
 and defends the wrong and injury whereof and  
 craves oyer of the said supposed writing obligatory  
 in the said amended Declaration mentioned and it  
 is read to him in the words and figures following  
 to wit:

Know all men by these Presents that we Rich-  
 ard P. Morgan of the county of Cook and State  
 of Illinois are held and firmly bound unto John  
 L. Wilson, Sheriff of Cook County in the State of  
 Illinois in the sum of Four Thousand Dollars,

29

lawful money of the United States for the pay-  
ment of which sum well and truly to be made  
to the said John L. Wilson, Sheriff as aforesaid  
or his successors in office, executors, administrators  
or assigns, we hereby jointly and severally bind  
ourselves, our heirs executors and administrators.  
Witness our hands and seals this Seventeenth day  
of April Eighteen hundred and fifty seven.

And he also craves over of the Condition of the  
said supposed writing obligatory and it is read to  
him in the words and figures following, to wit:

The condition of this obligation is such that  
whereas James Niell has lately sued out of the Cir-  
cuit Court of Peoria County a certain writ of Capias  
ad respondendum in a certain plea of trespass  
on the case on premises against Richard P. Morgan  
returnable to the next term of the said Court to  
be held at Peoria in Peoria County on the second  
Monday of May next. Now if the said Richard  
P. Morgan shall be and appear at the said Court  
to be held at Peoria aforesaid on the said second  
Monday of May next, and in case the said  
shall not be received as bail in 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

being accepted as bail shall pay and satisfy the costs and Condemnation money which may be rendered against the said Richard P. Morgan in the plea aforesaid or surrender the body of the said Richard P. Morgan in execution in case the said Richard P. Morgan 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

	Rich <sup>d</sup> . P. Morgan	} Seal	
	S. S. Morgan		} Seal
	P. W. Peckham		} Seal.

which being read and heard the said Defendant says, that the said Plaintiffs said Declaration and the matters therein contained in manner and form as the same are therein stated and set forth, are not sufficient in law for the said plaintiff to have or maintain his aforesaid action thereof against the said Defendant and that he the said Defendant is not bound by law to answer the same. And that he the said Defendant Sidney S. Morgan is ready to verify, wherefore by reason of the insufficiency of the said Declaration and of the said Bond in this behalf, the said Defendant prays judgment

31

and that the said plaintiff may be barred from  
having or maintaining his aforesaid action &c.

Switt & Orme

Attys for P. W. Peckham.

And thereupon this cause was continued by said  
Court from term to term, until the September Term  
1861, and at said September Term to wit: on the  
9<sup>th</sup> day of September A.D. 1861, further proceedings  
were had in this cause as appears of record, to wit:

James Keill

vs

Richard J. Morgan, Sidney S.  
Morgan & Peter W. Peckham

In Debt

And now at this day  
comes again the said plaintiff by his attorneys, and  
also comes the said Defendant Peter W. Peckham  
by his attorneys, and the Court having heard the  
Demurrer of said Peckham to the Plaintiffs amend-  
ed Declaration in this cause, is of opinion that  
said Demurrer be sustained. And now the said Plain-  
tiff abiding by his Declaration. It is thereupon or-  
dered by the Court, that said Defendants be hereof  
discharged and that they recover of and from the  
said plaintiff their costs herein expended and that

32

they have execution therefor.

State of Illinois }  
McLean County. } I, Wm. McCullough, Clerk  
of the Circuit Court in and for said County do  
hereby certify that the foregoing is a true and com-  
plete transcript of the records of my office pertaining  
to a certain cause wherein James Neill was plain-  
tiff and Richard P. Morgan & others were De-  
fendants.



Given under my hand and seal  
of office at Bloomington, this 10<sup>th</sup>  
day of September A.D. 1861.

Wm. McCullough Clerk  
By C. Schneiders  
Deputy.

James Hat }  
vs }  
Richard T. Morgan }  
attorney }  
In the Supreme  
Court  
April Term A.D.  
1862  
Error to the Law

and now comes the said Plaintiff  
in Error and says that in the  
Record Proceedings and in the Ren-  
dition of the Judgment aforesaid  
there is error in this writ.  
Said Court Error.

1st In sustaining the Defendants Demurrer  
to the Plaintiffs Declaration

And in Rendering Judgment on said  
Demurrer in favor of the Defendant

For these & other Errors in said  
Record he prays that the Judgment  
may be reversed set aside & wholly  
Nothing Estimated

J. H. Chapin  
Att'y

And now comes the defendant in  
Error by Orme's his Attorney and says  
that there are no such errors in the  
Record and proceedings aforesaid  
as plaintiff hath complained of.

W. W. Orme

Atty. for defendant

114 185

James Neill.

25

Richard P. Morgan. et al

Transcript of Record.

\$5. Clerk's fee  
paid me  
Apr 6. 1862

Filed April 22, 1862  
L. Leland  
Clerk