No. 14472

Supreme Court of Illinois

Gougar

vs.

Kavanaugh et al

71641 7

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division

No. 170

Langford

vs.

Kennedy

State of Illinois } Will County Circuit Court
County of Will } ss

Joseph E Gougar }
3087 vs } Cognovit
Michael J Kavanagh }
Patrick Kavanagh }
Patrick Kavanagh }

$ 6.00 Recieved of Plaintiff Six Dollars in full of my fees in Certified Transcript of the Record and proceedings in above cause in Suit Court for the Supreme Court

B. F. Russell Clerk

Joliet April 14th 1863

State of Illinois
Supreme Court

Third Grand Division
April Term A.D. 1866

Joseph E Gough
Appellant
vs
Michael J Kavanagh
Patrick Kavanagh
& Patrick Kavanagh
Appellees

Appeal
from Will

Plaintiffs Brief

In Vacation after the May Term of the Will County Circuit Court A.D. 1862 the plaintiff filed his declaration with note, Power of Attorney & proofs against the said defendants and the Court entered judgment by confession against said defendants in favor of said plaintiff for the sum of one hundred and eighty dollars and twenty five cents together with costs and that the plaintiff have execution for the same

See Record and printed record, pages 9 & 10

At the October Term of said Circuit Court in said year the said defendants entered their motion to correct the record in said cause and thereupon the said plaintiff by

R. E. Barber his attorney entered his cross motion for leave to file additional proof of the execution of the power of attorney filed herein. And said ~~See printed Record pages~~ defendants also entered their motion to set aside the said judgment.

See printed record pages 11 & 12

At the December Term of said Circuit Court, the Court set aside the said judgment and quashed the said execution and dismissed the plaintiff said suit and rendered judgment for the said defendants and against the said plaintiff for their costs and that the said defendants have execution therefor

See printed record pages 12 & 13

We contend that the Circuit Court erred in dismissing said suit for the following reasons

I

The plaintiff by his evidence made a good case at the said Vacation Term and obtained a judgment

See the Bill of exceptions in this case

II

There was no evidence offered by said defendants to defeat said judgment

The Court instead of dismissing said cause, if the defendants had a valid defence to said bond ought to have ordered a stay of execution and a suspension of the judgment, directing at the same time that the judgment should stand as security to plaintiff

See 4 Gil 411 to 417
8 Barn. & Cres. 217
15 Ill. 354
22 " 477
6 Johns 296 and
especially 6 " 297

IV

The Court erred in quashing the execution and setting aside the judgment

See same authorities

R. E. Barber &
Knapp & Breckenridge
Pltffs Attys

170

Sup. Ct. Me. 3d. dec.

Joseph E. Grugan
Appellant

vs

Michael J. Kirvanagh
Ebals

Pltff's Brief

Filed Dec 22d 1863
S. Selden
Clk

Supreme Court of the State of Ills.

170 Gouger vs Kavanagh

And the said plaintiff by his attys. Barber & Snapp & Buckmundy comes & moves the Court for an order perpetuating the lien on the property levied on under the execution issued by the Will County Circuit Court on the judgement in this cause, with a direction to the late Sheriff of said County to hold the same until a final determination of this cause by this Court.

Barber, Snapp & Buckmundy
Attys for Plff

137-78

170

Younger
vs
Kavanagh

Motion

Filed April 22d. 1863
G. Selden
Cl.

State of Illinois
Supreme Court 3rd Grand Division

Joseph E Gougar
Appellant
vs
Michael J. Kavanagh, Patrick Kavanagh & Patrick Kavanagh
Appellees

} Appeal from Will

State of Illinois County of Will ss

Perry S. Scarritt of said County being first duly sworn saith that on the 31st day of May A.D. 1862 William W. Bartlett of said County was the Sheriff of said County and acting as such, that this affiant was deputy Sheriff of said County during the whole official term of the said Sheriff and had charge and control of a large part of the official business of said Sheriff during his official term from Nov. A.D. 1860 to Nov. A.D. 1862, that on said date first aforesaid an execution was issued by the Clerk of the Circuit Court of said Will County in the above entitled cause directed to the said Sheriff to execute, that this affiant as such deputy Sheriff on the day of the date of said execution received and receipted the same for the said Sheriff being before that time duly appointed and qualified as deputy Sheriff aforesaid, that on the 16th day of August A.D. 1862 the said Sheriff by virtue of the said execution levied upon the following described

property to wit Eighty acres of Corn and twenty acres of Oats as the property of defendants in said Execution, that on or about the 27th day of September A.D. 1862 an order of the said Circuit Court to stay proceedings on said Execution was served upon this affiant as said deputy sheriff, that this affiant as such deputy sheriff has had the charge and control of said Execution ever since said sheriff receipt thereof, by order of said sheriff; and holds and retains the same subject to further order, that no payment has ever been made upon the said Execution, that said Execution is in the sum of one hundred and Eighty + 20/100 dollars damages and two 70/100 dollars costs Perry P. Scarritt

Sworn to and sworn to before me
this 21st day of April, A.D. 1863
B. F. Russell Clerk
of the Circuit Ct. Ills.

Attest the seal of said Court

State of Illinois
Supreme Court 3rd Grand division.

Joseph E. Gougar
Appellant
vs
Michael J Kavanagh, Patrick Kavanagh and Patrick Kavanagh
Appellees
} Appeal from Will

State of Illinois LaSalle County ss

Royal E. Barber of Will County in said State being first duly sworn saith that he is the attorney of said appellant in the above entitled cause, that as this affiant is informed and verily believes, the said Corn levied upon by virtue of said execution issued in the said cause was harvested and cribbed by said defendant and remained in said crib until within a very short time last past, that now the said defendant is removing the said Corn from said crib and disposing of the same to the detriment of said appellant, that during the life of said execution the said defendants had not and now have not any property besides the said Corn liable to execution excepting the said cats which are not now liable to process against said defendants, that there is no defense whatever on the merits to said note upon which the said judgment was entered or any part thereof, that the benefits of any final judgment which may be obtained by said appellant in said cause

will be in danger of being lost unless the said Execution lien on said Corn be perpetuated and preserved

R E Barber

Subscribed & sworn to before me this 21st day of Apr 1863
L. Leland
Clk.

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Supr Ct 2d Dist

Joseph E Morgan
vs
Michael Hennessy et als

Affts R R Scantlebury & R E Barber

Filed Apl. 21, 1863.
L. Leland
Clk.

Supreme Court 3rd Grand Division

Joseph E Gongar
Appellant
vs
Michael J. Kavanagh. Patrick Kavanagh & Patrick Kavanagh
Appellees

} Appeal from Will

State of Illinois. County of Kane } ss

Francis Goodspeed of Will County in said State being first duly sworn saith that he is well acquainted with James O'Kercheval and William Tonner of said Will County and with their pecuniary responsibility and that they are abundantly sufficient security for the sum of several thousand dollars free from all exemptions

Subscribed & sworn to before me this 21st day of April 1863
L. Leland
Clk.

} Francis Goodspeed

170

Sup. Ct. 3rd G. Div.

Joseph E. Gongan

vs

Michael J. Kavanagh
Etals

Justification Bail

Filed Apl. 21, 1863.
L. Leland
Clk.

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SUPREME COURT.

The People of the State of Illinois by the Grace of God, Free and Independent!

To all to whom these presents shall come, GREETING :—

Know Ye that we having caused to be inspected the records and proceedings now remaining in the office of our Clerk of our Circuit Court, in and for our County of Will, do find there certain proceedings by Bill of Exceptions in words and figures following, to-wit:

"STATE OF ILLINOIS, } ss. Will County Circuit Court of
"County of Will, } "December Term, 1862.

"Joseph E. Gougar,
vs.
"Michael J. Kavanagh, Patrick Kavanagh and } Cognovit.
"Patrick Kavanagh,

"Be it remembered that at the October Term, A. D., 1862 of "said Court, to-wit: on the 7th day of October 1862, the said de-"fendants in the above entitled cause by Messrs. Randall & Fuller "their Attorneys, entered their motion therein to set aside the "judgment entered in said cause in Vacation after the last May "Term of said Court upon the following Declaration, Note and "Warrant of Attorney, three several affidavits upon the back of "said Note and Warrant of Attorney, and Cognovit, to-wit:"

Copy of Declaration filed in said cause on the 31st day of May, A. D. 1862, to-wit:

"State of Illinois, } ss. Will County Circuit Court,"
"Will County,

"In Vacation after the May Term in the year of Our Lord One "Thousand Eight Hundred and Sixty-Two."

"Joseph E. Gougar, Plaintiff in this suit by R. E. Barber his "Attorney, complains of Michael J. Kavanagh, Patrick Kavanagh "and Patrick Kavanagh, [the said Patrick last aforesaid being of "the town of Troy and the other Patrick aforesaid of the town of "New Lenox both in said Will County] Defendants who waived "process, &c., in a plea of Trespass on the case on premises; For "that whereas the said Defendants heretofore, to-wit: on the 24th "day of September in the year of Our Lord One Thousand Eight "Hundred and Sixty at Joliet, Ill., to-wit: at Joliet in the County "of Will, aforesaid made their certain promissory note and then "and there delivered the same to the said Plaintiff, in and by "which said note, said Defendants by the name, style and descrip-"tion of M. J. Kavanagh, Patrick Kavanagh, Patrick Kavanagh, "jointly promised to pay to the order of said Plaintiff by the name "style and description of Jos~~eph~~ E. Gougar, one year after the "date thereof, the sum of two hundred and fifty dollars with inter-"terest at the rate of ten per cent. per annum after due, it being "for money actually boarowed [having deposited with him as &c., "&c., &c., and costs of said sale] for value received. By means "whereof, and by force of the Statute in such case made and pro-"vided, the said Defendants became liable to pay said Plaintiff, "said sum of money mentioned in said Note, and being so liable, "in consideration thereof, then and there undertook and promised "to pay the same to said Plaintiff according to the tenor and effect, "tone, intent and meaning of said note, to-wit: at the place afore-"said."

"Yet the said Defendants not regarding their said promises and "undertakings, but contriving, etc., although ~~after~~ then requested so to "do, have not paid said plaintiff said sum of money but so to do

"have hitherto wholly neglected and refused, and still do neglect "and refuse, to the damage of said Plaintiff of Two hundred dol- "lars, and therefore he brings suit, etc."

"R. E. BARBER, Att'y for Plaintiff."

Copy of Note and Warrant of Attorney being made of printed form upon the same page of a sheet of paper filed by said Attorney in said entitled cause on said 31st day of May, A. D. 1862, towit:

"$250. Joliet, Ill., 24th Sep't 1860."

"One year after date, we promise to pay to Jos. E. Gougar or "order Two Hundred ~~and~~ Fifty Dollars for value received, with "interest at the rate of ten per cent. per annum, after due, it being "for money actually borrowed, [having deposited with them as col- "lateral security, with authority to sell the same on the non-per- "formance of this promise, at auction or private sale, either with "or without notice at their option, and to retain sufficient of the "avails of said sale to pay the above sum, interest and costs of "said sale."]

"M. J. Kavanagh,
"Patrick Kavanagh,
"Patrick Kavanagh."

"Know all men by these presents, that we are jointly and sever- "ally indebted to Joseph E. Gougar the foregoing promissory Note, "bearing even date herewith the sum of two hundred fifty dollars, "with interest thereon at the rate of ten per cent. per annum after "the same becomes due and payable, it being for money actually "borrowed and due one year after date."

"Now therefore in consideratian of the premises we do jointly "and each for himself make, constitute and appoint D. G. Grover "or any other Attorney of any Court of Record to be our true and

"lawful Attorney of each of us irrevocable, and to be the true and lawful Attorney for us and each or
"either of us, and in our and each or either of our name or names, to
"appear in any Court of Record, or other Court having competent jur-
"isdiction in term time or in vacation or at any time, in any of the States
"or Territories of the United States, or in any other country, at any
"time before or after the said note becomes due to waive the services of
"process and confess a judgment against us and each or either of
"us and in favor of said Jos. E. Gougar or any of them or their
"assignee or assignees upon the said Note for the above sum or for
"as much as appears to be due according to the tenor and effect of
"~~of~~ said Note, with interest thereon at the rate of ten per cent.
"per annum, to the day of the entry of said judgment according
"to the tenor and effect of said Note, together with costs including
"costs of protests, Fifty Dollars Attorneys Fees, and also to file a
"Cognovit for the amount that may be so due, with an agreement
"therein that no writ of error or appeal shall be prosecuted upon
"the judgment, entered by virtue thereof, nor any bill in equity
"filed to interfere in any manner with the operation of said judg-
"ment, and to release all errors that may intervene in the entering
"up of said judgment, or issuing execution thereon; and also to
"waive all benefit or advantage to which we or either of us are or
"may be entitled by virtue of any homestead or other exemption
"law now or hereafter in force, in this or any other State or Terri-
"tory or District where judgment may be entered by virtue there-
"of.

"Hereby ratifying and confirming all that said Attorney may do
"by virtue thereof."

"Witness our hands and seals at Joliet, this Twenty-Fourth day
"of September, A. D. 1860."

'In presence of

"M. J. Kavanagh, [seal."]
"Patrick Kavanagh, [seal."]
"Patrick Kavanagh, [seal."]

Copy of three several affidavits all written and made upon the back of said note and warrant of Attorney and on said sheet of paper, and filed as aforesaid in said entitled cause, an said 31st day of May, A. D. 1862, to-wit:

"STATE OF ILLINOIS, } ss. "T. G. Haines personally known to me
"Will County, } "being duly sworn doth depose and say that Patrick Kavanagh whose "name appears second, to the within judgment Note, did acknow- "ledge the same to be his signature for the uses and purposes "therein set forth."

"Subscribed and sworn to before me } T. G. Haines.
"this 29th day of May, A. D. 1862, }
D. Haven, J. P. }

and

"State of Illinois, } ss. William F. Barritt of said County being
"County of Will, } "duly sworn, deposes and saith that he is acquainted with Patrick "Kavanagh, of the Town of Troy, in said County, and with his hand "writing, and has seen him write, and verily believes, that said last "made and bottom signature to the within and foregoing power of "Attorney is the genuine signature of the said Patrick Kavanagh of "said Town."

"Subscribed and Sworn to before me }
"this 31st day of May, 1862, }
R. E. Barber, } W. F. Barrett.
Notary Public, Will Co., Ill., }

and

"State of Illinois, } ss.
"County of Will, }

"William H. Zarley, of said Town being duly sworn, saith that "he is acquainted with Michael J. Kavanagh, late of said County

"and with his hand writing, and has seen him write and verily be-
"lieves that said first made signature "M.J. Kavanagh" to the with-
"in and foregoing Power of Attorney is the genuine signature of
"said Michael J. Kavanagh.

"W H Zarley"

"Subscribed and Sworn to before me
"this 31st day of May, 1862,
R. E. Barber,
Notary Public, Will Co., Ill.,

Copy of Cognovit filed by said Attorney in said entitled cause, on said 31st day of May, A. D. 1862, to-wit:

"State of Illinois,
"Will County, } ss "In the Will County Circuit Court,
"In Vacation after the May Term A. D.
"1862."

"Michael J. Kavanagh, Patrick Kavanagh
"& Patrick Kavanagh
Ats.,
Joseph E. Gougar. } "Cognovit."

"And the said Michael J. Kavanagh, Patrick Kavanagh & Pat-
"rick Kavanagh Defendants, by A. N. Waterman their Attorney,
"come and defend the wrong and injury, when etc., and waiving the
"service of process, for plea say, that the allegations in the said
"Plaintiff's declaration contained are true; that the said defendants
"did undertake and promise in manner and form as the said Plain-
"tiff hath above thereof complained against them; that the said Plain-
"tiff hath sustained damage by reason of the non-performance of
"the several promises and undertakings aforesaid, in the sum of one
"hundred and sixty and $\frac{25}{100}$ dollars, and they therefore confess judgment
"herein, in favor of said Plaintiff, including twenty dollars for
"Attorneys fees for entering up the judgment in the sum of one
"hundred and eighty dollars and twenty-five cents, and the costs
"and charges by the said Plaintiff in this suit to be taxed accord-
"ingly. And the said Defendants by A. N. Waterman their said

"Attorney, hereby agree that no writ of error or appeal shall be "prosecuted upon the judgment entered by virtue hereof, nor any "bill in equity filed to interfere with or in any manner prevent "the operation of said judgment."

"And the said defendants by A. N. Waterman their said Attorney "hereby release all errors that may intervene in the entering up of "said judgment, or in issuing of execution thereon, and also consent "that the execution being issued upon said judgment immediately, "Dated May 31st, 1862." A. N. Waterman,
Att'y for Defendants.

"That at said October Term of said Court, the said defendants "entered their motion to correct the record in said cause to-wit: "on the 14th day of said month of October, 1862, and thereupon "the said plaintiff by R. E. Barber his Attorney, entered his cross "motion for leave to file additional proof of the execution of the "power of Attorney filed herein, and then offered in evidence un-"der said cross motion, the following affidavit to-wit:"

Will County Circuit Court,

	Joseph E. Gougar.	
"No. 3050,	vs	"Cognovit."
"Michael J. Kavanagh,	Patrick Kavanagh	
"& Patrick Kavanagh		

"State of Illinois, } ss
"Will County,

"Thornton G. Haines of said County, being first duly sworn, "saith that he is the witness who made affidavit before Dwight "Haven an acting Justice of the Peace in and for said County, on "the back of the Note and warrant of Attorney now on file in the "above entitled cause, on the 29th day of May, A. D. 1862, as fol-"lows, to-wit: "that Patrick Kavanagh whose name appears second "to the within judgment Note, did acknowledge the same to be his

"signature for the uses and purposes therein set forth," that said "Patrick Kavanagh, who was by this affiant refered to is Patrick "Kavanagh of the Town of New Lenox in said County, and that "he said Patrick above herein refered to at the date of said call "below stated, and of said affidavit resided in said Town of New "Lenox; that on the 27th or the 28th day of May, A. D. 1862, "being the day or day or two next previous to the date of said affi-"davit, this affiant called on said Patrick Kavanagh of said Town "of New Lenox, and said Note and warrant of Attorney above re-"fered to was then exhibted to him said Patrick Kavanagh of the "Town of New Lenox, and the point of a knife was placed upon "the second or middle signature to said warrant of Attorney in the "execution thereof, and th~~ere~~us pointed out said signature above here-"in refered to was shown to him, the said Patrick Kavanagh above "herein designated, in the presence of this affiant, and he the said "Kavanagh above designated was then asked if said signature to "said Warrant of Attorney shown and pointed out to him as afore-"said, was his signature for the uses and purposes in said Warrant "of Attorney stated, and he said Patrick Kavanagh of the Town of "New Lenox then and there replied in the presence and hearing of "this affiant, that it was."

"Subscribed and sworn to before me
"this 14th day of October, 1862,
B. F. Russell, Clerk,
} Thornton G. Haines.

"That at said October term of said Court to-wit: on the 15th day "of October, 1862, the said parties to said cause by their respect-"ive Attorneys, by agreement submitted the said motions and "cross motions to the decision of the Court upon written arguments, "whereupon it was ordered by the Court upon agreement of said "parties, that either of said parties have the right to appeal from "the judgment of said Court upon filing the opinion and making "the decision of said Court to the Supreme Court of said State, at "any time within twenty days after filing the opinion of said Court "on said motions and cross motions."

"That at said December Term of said Court 1862, *to-wit*: on "the 2d day of December, 1862, the said Circuit Court filed the "opinion and made and entered the order and decision of said Cir-"cuit Court denying said cross motion, rejecting the evidence of "said proposed additional proof, quashing the execution issued upon "the said judgment and setting aside the said judgment, to which "opinion, order and decision of said Circuit Court excluding the "said proposed additional affidavit of said witness Haines, quashing "said execution, and setting aside the said judgment, the plaintiff "by his counsel then and there excepted and prayed that this his "bill of exceptions be signed and sealed by the judge of said Cir-"cuit Court, which is done."

"And this was all the evidence offered in said cause."

S. W. Harris [SEAL,]
Judge of the 11th Judicial Circuit.

And also certain proceedings of said Court of Record in said entitled cause of which the following is a correct copy of the record of said Court thereof to-wit:

"United States of America,
"State of Illinois, } ss
"County of Will,

"In vacation after a regular Term of the Circuit Court of said "County of Will, begun and holden at the Court House, in Joliet, "in said County of Will, on Monday, the Nineteenth day of May, "in the year of Our Lord One Thousand eight hundred and sixty-"two, being the third Monday of said Month."

"Present The Honorable Sidney W. Harris, Judge,

Benjamin F. Russell, Clerk."

"Attest B. F. Russell, Clerk."

"No. 3050, In the Matter of
Joseph E. Gougar.
vs
"Michael J. Kavanagh, Patrick Kavanagh
"& Patrick Kavanagh." } "Cognovit."

"And now on this day, came the said Plaintiff by R. E. Barber, "Esquire, his Attorney, and files his declaration in an action of "Trespass on the case on promises, against the said defendants and "files also a Warrant of Attorney, signed and sealed by the said "defendants, the execution of which is duly proven to the satis-"faction of the Court [by affidavit on file,] authorizing any Attor-"ney of any Court of Record to appear in this Court, waive service "of Process, and confess judgment in favor of the said Plaintiff and "against the said defendants, for the amount due upon a certain "proimssory Note annexed to said Warrant of Attorney; also for "the sum of Twenty Dollars, Attorneys fees, besides the costs of "this suit."

"Thereupon came also A. N. Waterman, Esquire, an Attorney "of this Court, in behalf of said defendants and files his cognovit, "by which he waives service of process, and confesses and consents "that judgment may be entered in favor of the said plaintiff and "against the said defendants, for the sum of One Hundred and "Eighty Dollars and Twenty-five cents, it being the amount due "upon said Note, including Attorneys fees. And the said Attor-"ney releases all errors in entering up this judgment [either in law "or equity,] or in issuing execution thereon, and consents to the "issuing of immediate execution on the same. It is thereupon "considered and ordered by the Court that the said Plaintiff have "and recover of the said Defendants, his damages for the said sum "of One Hundred and Eighty Dollars and Twenty-five cents, so as "aforesaid confessed, together with his costs and charges by him "about his suit in this behalf expended, and that he have execu-"tion for the same."

And afterwards to-wit: on the Seventh day of October, in the

"year of our Lord One Thousand Eight Hundred and *Sixty-Two,*
"the same being one of the regular days of the October Term of
"said Will County Circuit Court, for the year, A. D. 1862, and the
"said Court being then duly organized and sitting for the adjudica-
"tion of business the following among other proceedings were had
"and entered of Record by said Court in words and figures follow-
"ing to-wit:

Joseph E. Gougar. "No. 3050, vs "Michael J. Kavanagh, Patrick Kavanagh "& Patrick Kavanagh."	"Cognovit."

"Now at this day come the said Defendants by Randall & Fuller,
"their Attorneys, and enter their motion to set aside the judgment
"heretofore at the Vacation after the last May Term hereof entered
"herein."

And afterewards to-wit: on the Fourteenth day of October, in the year of Our Lord One Thousand Eight Hundred and Sixty-Two, the same being one of the regular days of the October Term of said Court for the year A. D. 1862, and the said Court being then duly organized and sitting for the adjudication of business, the following proceedings, among others, were had and entered of record by said Court, in words and figures following to-wit:

Joseph E. Gougar. "3050, vs "Michael J. Kavanagh, Patrick Kavanagh "& Patrick Kavanagh."	"Cognovit."

"Now at this day come the said defendants by Randall & Fuller their
"Attorneys, and enter their motion for an order of this Court to
"correct the Records of the judgment of this Court entered in this
"cause during the last Vacation of said Court. Thereupon comes

"said Plaintiff by his said Attorney and enters his cross motion for "leave to file additional proofs of the power of Attorney herein."

And afterewards to-wit: on the Fifteenth day of October, in the year of Our Lord One Thousand Eight Hundred and Sixty-Two, the same being one of the regular days of the October Term of said Court for the year A. D. 1862, and the said Court being then duly organized and sitting for the adjudication of business, the following proceedings, among others, were had and entered of record by said Court, in words and figures following to-wit:

Josepeh E. Gougar. "3050, vs "Michael J. Kavanagh, Patrick Kavanagh "& Patrick Kavanagh."	"Cognovit."

"Now at this day again, come the parties plaintiff and defend-"ant in this suit by their respective Attorneys, and on whose mo-"tion it is ordered by the Court that this cause be and it hereby is "submitted to the Court, and that written arguments be furnished "the Judge aforesaid within ten days from and after this date "And it is also further ordered that the judgment in this cause be "entered as of this present term, and that either party to this ac-"tion have the right to appeal from the judgment of this Court to "the Supreme Court of this State, within twenty days from and "after the filing of the opinion and decision of the Court herein, "upon filing a good and sufficient bond to be approved by the "Clerk of this Court."

And afterwards to-wit: on the second day of December, in the year of Our Lord One Thousand Eight Hundred and Sixty-two, the same being one of the regular days of the December Term of said Court for the year A. D. 1862, and the said Court being then duly organized and sitting for the adjudication of business, the following among other proceedings were had and entered of Record by said Court in words and figures following to-wit:

Joseph E. Gougar. "No. 3050, vs "Michael J. Kavanagh, Patrick Kavanagh "& Patrick Kavanagh."	"Cognovit."

"Now at this day come the said parties to this suit, by their res-
"pective Attorneys, and now is called up this cause for decision.
"And the Court having heard the evidence adduced, also the argu-
"ments of counsel in the last Vacation of this Court, and being now
"fully advised in the premises, it is ordered by the Court that the
"Execution issued in this cause be and the same is hereby quashed,
"and that the judgment heretofore entered in this cause be and the
"same is hereby set aside, and that the said Plaintiff pay the costs
"of this suit, and that the same be dismissed with leave to the said
"Plaintiff to withdraw the papers on file herein."

"Thereupon on motion of said Defendants, it is ordered that said
"Defendants do have judgment against the said Plaintiff, for their
"costs in this behalf expended.

"It is therefore considered by the Court, that said Defendants
"do have and recover of said Plaintiff their costs and charges by
"them about their suit in this behalf expended, and that they do
"have execution therefor. This judgment being entered as per
"agreement of parties of Record at the last October Term of this
"Court."

And also upon the 20th day of December, A. D. 1862, there was filed by the Clerk of said Court, an appeal Bond to the Supreme Court of said State, in said entitled cause of which said Bond the following is a true copy, to-wit:

"Know all men by these presents: that we Joseph E. Gougar,
"James C. Kercheral & William Tonner of Will County, and State
"of Illinois, are held and firmly bound unto Michael J. Kavanagh,

"Patrick Kavanagh & Patrick Kavanagh, in the penal sum of three "hundred dollars, lawful money of the United States, for the pay- "ment of which well and truely to be made, we bind ourselves, our "heirs and administrators jointly, severally and firmly, by these "presents:"

"Witness our hands and seals this 15th day of December, A. D "1862."

"The condition of the above obligation is such: Whereas, the "said above bounden Joseph E. Gougar, did on the 31st day of "May, A. D. 1862, enter up and recover a judgment by Cognovit, "in the Will County Circuit Court, in said State, in Vacation after "the May Term thereof, A. D. 1862, in the sum of one hundred "and sixty and 25—100 dollars, and also the further sum of "twenty dollars for Attorneys fees for entering up the judgment, "upon which judgment execution was duly issued, and, whereas, "on the 27th day of September, A. D. 1862, the said Patrick Kav- "anagh, of the Town of New Lenox, in said County and State; one "of the defendants in said judgment, filed in the office of the Clerk "of said Court, his petition for the stay of further proceedings un- "der said judgment and execution with an order of Hon. S. W. "Harris, Judge of said Circuit Court, granting an order for the stay "of further proceedings in said case until further order of the "Court."

"And whereas, at the October Term of said Court, the said Pat- "rick Kavanagh last aforesaid, entered his motion to said Court to "quash said execution, and set aside said judgment. And where- "as, the said Circuit Court at the December Term thereof, A. D. "1862, made and entered an order and decision sustaining said mo- "tion, quashing said execution, and vacating said judgment from "which said order and decision of said Circuit Court in said causes, "the said Joseph E. Gougar, has prayed an appeal to the Supreme "Court of said State."

"Now if the said Joseph E. Gougar, shall duly prosecute his "said appeal, and shall pay all damages, costs and judgment which "may be awarded, ordered and decreed by the Supreme Court up- "on the trial of said appeal, in case the said order and decision of "said Circuit Court in said cause shall be affirmed, then the above "obligation to be void; otherwise to remain in full force and effect."

"Joseph E. Gougar, [SEAL,]
"J. C. Kercheral, [SEAL,]
"Wm. Tonner, [SEAL."]

"Approved by me, this
"20th day of Dec., A. D. 1862,
B. F. Russell, Clerk."

And also a certain other paper which was filed in the aforesaid entitled cause, on the 27th day of September, 1862, of which the following is a correct copy, to-wit:

"To the Honorable Sidney W. Harris, Judge of the Eleventh Judi- "cial Circuit, of the State of Illinois:

"The Petition of Patrick Kavanagh, of the Town of New Lenox, "Will County, and State aforesaid, respectfully shows that on or "about the Thirty-first day of May, A. D. 1862, and in vacation "after the May Term of the Circuit Court, of the County of Will, "a judgment was entered in the Clerk's Office of the said Court, "in favor of Joseph E. Gougar and against Michael J. Kavanagh, "Patrick Kavanagh & Patrick Kavanagh, upon warrant of Attorney "and Cognovit, a copy of which is hereto attached. That your "petitioner is informed and believes that the said judgment is ir- "regular and illegal for the following reasons:

"That there is no law nor authority for entering any judgment "by Cognovit and warrant of Attorney in vacation in said Will "County."

"That the said judgment is for a greater amount than the cause of "action declared on."

"That it is uncertain from the declaration as to what the cause "of action is."

"That the instrument given in evidence is not the instrument "described in the declaration."

"That the judgment is for more than is warranted by the evi-"dence given."

"That there is no sufficient evidence of the signature of your "petitioner to the said Warrant of Attorney."

"That the said declaration does not appear to be sustained by "the evidence filed therewith."

"Your petitioner further shows, that previous to the entering up "of said judgment he was fully released from all responsibility up-"on said instrument, called a promissory Note, in said declaration."

"Your petitioner further shows, that the plaintiff in said judg-"ment has caused an Eexcution to be issued thereon, out of the "said Clerk's Office, and the Sheriff of Will County has levied on "the property of your petitioner by virtue of said execution, and "is now threatening to sell the same."

"Your petitioner prays an order for the stay of further proceed-"ings under said judgment, and execution until the further order "of said Court." *Patrick Kavanagh.*

"State of Illinois, }
"Will County, } ss

"Patrick Kavanagh being duly sworn on oath says, that the

"facts set forth in the foregoing petition are true, according to his "best information and belief."

"Subscribed and sworn to before me,
"this 23d day of Sept., A. D. 1862,
B. F. Russell, Clerk."
} "Patrick Kavanagh."

State of Illinois,
County of Will, } ss I, Benjamin F. Russell, Clerk of the Circuit Court in and for said County, in the State aforesaid, do hereby Certify, the above and foregoing to be a full, true and correct copy of the Bill of Exceptions, Appeal Bond to the Supreme Court, and the Record of the proceedings of said Court, and of the files in the cause therein entitled; wherein, Joseph E. Gougar is Plaintiff, and Michael J. Kavanagh, Patrick Kavanagh & Patrick Kavanagh are defendants, as the same appears from the Records and files of said Court, now remaining in my said Office, and that said averments of the said Clerk in said Bill of Exemptions are true.

{ L. S. }

Witness, Benjamin F. Russell, Clerk of said Court and the seal thereof hereto affixed at office in the City of Joliet, in said County, this 25th day of March, A. D. 1863.

B. F. Russell, Clerk.

R. E. BARBER,
Att'y for Plaintiff.

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Gorman
vs
Kavanagh

Abstract

Filed April 21
1863

S Sloane
Clk

SUPREME COURT.

The People of the State of Illinois by the Grace of God, Free and Independent!

To all to whom these presents shall come, GREETING :—

Know Ye that we having caused to be inspected the records and proceedings now remaining in the office of our Clerk of our Circuit Court, in and for our County of Will, do find there certain proceedings by Bill of Exceptions in words and figures following, to-wit:

"STATE OF ILLINOIS, } ss. Will County Circuit Court of
"County of Will, } "December Term, 1862.

"Joseph E. Gougar,
vs.
"Michael J. Kavanagh, Patrick Kavanagh and } Cognovit.
"Patrick Kavanagh,

"Be it remembered that at the October Term, A. D., 1862 of "said Court, to-wit: on the 7th day of October 1862, the said de-"fendants in the above entitled cause by Messrs. Randall & Fuller "their Attorneys, entered their motion therein to set aside the "judgment entered in said cause in Vacation after the last May "Term of said Court upon the following Declaration, Note and "Warrant of Attorney, three several affidavits upon the back of "said Note and Warrant of Attorney, and Cognovit, to-wit:"

Copy of Declaration filed in said cause on the 31st day of May, A. D. 1862, to-wit:

"STATE OF ILLINOIS, } ss. Will County Circuit Court,"
"Will County, }

"In Vacation after the May Term in the year of Our Lord One "Thousand Eight Hundred and Sixty-Two."

"Joseph E. Gougar, Plaintiff in this suit by R. E. Barber his "Attorney, complains of Michael J. Kavanagh, Patrick Kavanagh "and Patrick Kavanagh, [the said Patrick last aforesaid being of "the town of Troy and the other Patrick aforesaid of the town of "New Lenox both in said Will County] Defendants who waived "process, &c., in a plea of Trespass on the case on premises; For "that whereas the said Defendants heretofore, to-wit: on the 24th "day of September in the year of Our Lord One Thousand Eight "Hundred and Sixty at Joliet, Ill., to-wit: at Joliet in the County "of Will, aforesaid made their certain promissory note and then "and there delivered the same to the said Plaintiff, in and by "which said note, said Defendants by the name, style and descrip-"tion of M. J. Kavanagh, Patrick Kavanagh, Patrick Kavanagh, "jointly promised to pay to the order of said Plaintiff by the name "style and description of Joseph E. Gougar, one year after the "date thereof, the sum of two hundred and fifty dollars with inter-"terest at the rate of ten per cent. per annum after due, it being "for money actually boarowed [having deposited with him as &c., "&c., &c., and costs of said sale] for value received. By means "whereof, and by force of the Statute in such case made and pro-"vided, the said Defendants became liable to pay said Plaintiff, "said sum of money mentioned in said Note, and being so liable, "in consideration thereof, then and there undertook and promised "to pay the same to said Plaintiff according to the tenor and effect, "tone, intent and meaning of said note, to-wit: at the place afore-"said."

"Yet the said Defendants not regarding their said promises and "undertakings, but contriving, etc., although ~~After~~ Then requested so to "do, have not paid said plaintiff said sum of money but so to do

"have hitherto wholly neglected and refused, and still do neglect "and refuse, to the damage of said Plaintiff of Two hundred dol- "lars, and therefore he brings suit, etc."

"R. E. BARBER, Att'y for Plaintiff."

Copy of Note and Warrant of Attorney being made of printed form upon the same page of a sheet of paper filed by said Attorney in said entitled cause on said 31st day of May, A. D. 1862, towit:

"$250. Joliet, Ill., 24th Sep't 1860."

"One year after date, we promise to pay to Jos. E. Gougar or "order Two Hundred ~~and~~ Fifty Dollars for value received, with "interest at the rate of ten per cent. per annum, after due, it being "for money actually borrowed, [having deposited with them as col- "lateral security, with authority to sell the same on the non-per- "formance of this promise, at auction or private sale, either with "or without notice at their option, and to retain sufficient of the "avails of said sale to pay the above sum, interest and costs of "said sale."]

"M. J. Kavanagh,
"Patrick Kavanagh,
"Patrick Kavanagh."

"Know all men by these presents, that we are jointly and sever- "ally indebted to Joseph E. Gougar the foregoing promissory Note, "bearing even date herewith the sum of two hundred fifty dollars, "with interest thereon at the rate of ten per cent. per annum after "the same becomes due and payable, it being for money actually "borrowed and due one year after date."

"Now therefore in consideratian of the premises we do jointly "and each for himself make, constitute and appoint D. G. Grover "or any other Attorney of any Court of Record to be our true and

and to be the true and lawful Attorney
"lawful Attorney of each of us irrevocable, and for us and each or
"either of us, and in our and each or either of our name or names, to
"appear in any Court of Record, or other Court having competent jur-
"isdiction in term time or in vacation or at any time, in any of the States
"or Territories of the United States, or in any other country, at any
"time before or after the said note becomes due to waive the services of
"process and confess a judgment against us and each or either of
"us and in favor of said Jos. E. Gougar or any of them or their
"assignee or assignees upon the said Note for the above sum or for
"as much as appears to be due according to the tenor and effect of
"~~of~~ said Note, with interest thereon at the rate of ten per cent.
"per annum, to the day of the entry of said judgment according
"to the tenor and effect of said Note, together with costs including
"costs of protests, Fifty Dollars Attorneys Fees, and also to file a
"Cognovit for the amount that may be so due, with an agreement
"therein that no writ of error or appeal shall be prosecuted upon
"the judgment, entered by virtue thereof, nor any bill in equity
"filed to interfere in any manner with the operation of said judg-
"ment, and to release all errors that may intervene in the entering
"up of said judgment, or issuing execution thereon; and also to
"waive all benefit or advantage to which we or either of us are or
"may be entitled by virtue of any homestead or other exemption
"law now or hereafter in force, in this or any other State or Terri-
"tory or District where judgment may be entered by virtue there-
"of.

"Hereby ratifying and confirming all that said Attorney may do
"by virtue thereof."

"Witness our hands and seals at Joliet, this Twenty-Fourth day
"of September, A. D. 1860."

"In presence	"M. J. Kavanagh, [seal."]
of	"Patrick Kavanagh, [seal."]
———	"Patrick Kavanagh, [seal."]

Copy of three several affidavits all written and made upon the back of said note and warrant of Attorney and on said sheet of paper, and filed as aforesaid in said entitled cause, an said 31st day of May, A. D. 1862, to-wit:

"STATE OF ILLINOIS, } ss. "T. G. Haines personally known to me
"Will County, } "being duly sworn doth depose and say that Patrick Kavanagh whose "name appears second, to the within judgment Note, did acknow- "ledge the same to be his signature for the uses and purposes "therein set forth."

"Subscribed and sworn to before me } T. G. Haines.
"this 29th day of May, A. D. 1862, }
D. Haven, J. P. }

and

"State of Illinois, } ss. William F. Barritt of said County being
"County of Will, } "duly sworn, deposes and saith that he is acquainted with Patrick "Kavanagh, of the Town of Troy, in said County, and with his hand "writing, and has seen him write, and verily believes, that said last "made and bottom signature to the within and foregoing power of "Attorney is the genuine signature of the said Patrick Kavanagh of "said Town."

"Subscribed and Sworn to before me }
"this 31st day of May, 1862, }
R. E. Barber, } W. F. Barrett.
Notary Public, Will Co., Ill., }

and

"State of Illinois, } ss.
"County of Will, }

"William H. Zarley, of said Town being duly sworn, saith that "he is acquainted with Michael J. Kavanagh, late of said County

"and with his hand writing, and has seen him write and verily be-
"lieves that said first made signature "M.J. Kavanagh" to the with-
"in and foregoing Power of Attorney is the genuine signature of
"said Michael J. Kavanagh.

"Subscribed and Sworn to before me
"this 31st day of May, 1862,
R. E. Barber,
Notary Public, Will Co., Ill.,

R. E. Barber

Copy of Cognovit filed by said Attorney in said entitled cause, on said 31st day of May, A. D. 1862, to-wit:

"State of Illinois, } ss "In the Will County Circuit Court,
"Will County, } "In Vacation after the May Term A. D.
"1862."

"Michael J. Kavanagh, Patrick Kavanagh
"& Patrick Kavanagh
Ats.,
Joseph E. Gougar. } "Cognovit."

"And the said Michael J. Kavanagh, Patrick Kavanagh & Pat-
"rick Kavanagh Defendants, by A. N. Waterman their Attorney,
"come and defend the wrong and injury, when etc., and waiving the
"service of process, for plea say, that the allegations in the said
"Plaintiff's declaration contained are true; that the said defendants
"did undertake and promise in manner and form as the said Plain-
"tiff hath above thereof complained against them; that the said Plain-
"tiff hath sustained damage by reason of the non-performance of
"the several promises and undertakings aforesaid, in the sum of one
"hundred and sixty and $\frac{25}{100}$ dollars, and therefore confess judgment
"herein, in favor of said Plaintiff, including twenty dollars for
"Attorneys fees for entering up the judgment in the sum of one
"hundred and eighty dollars and twenty-five cents, and the costs
"and charges by the said Plaintiff in this suit to be taxed accord-
"ingly. And the said Defendants by A. N. Waterman their said

"Attorney, hereby agree that no writ of error or appeal shall be "prosecuted upon the judgment entered by virtue hereof, nor any "bill in equity filed to interfere with or in any manner prevent "the operation of said judgment."

"And the said defendants by A. N. Waterman their said Attorney "hereby release all errors that may intervene in the entering up of "said judgment, or in issuing of execution thereon, and also consent "that the execution being issued upon said judgment immediately, "Dated May 31st, 1862." A. N. Waterman,
Att'y for Defendants.

"That at said October Term of said Court, the said defendants "entered their motion to correct the record in said cause to-wit: "on the 14th day of said month of October, 1862, and thereupon "the said plaintiff by R. E. Barber his Attorney, entered his cross "motion for leave to file additional proof of the execution of the "power of Attorney filed herein, and then offered in evidence un-"der said cross motion, the following affidavit to-wit:"

Will County Circuit Court,

"No. 3050, Joseph E. Gougar. vs "Michael J. Kavanagh, Patrick Kavanagh "& Patrick Kavanagh } "Cognovit."

"State of Illinois, "Will County, } ss

"Thornton G. Haines of said County, being first duly sworn, "saith that he is the witness who made affidavit before Dwight "Haven an acting Justice of the Peace in and for said County, on "the back of the Note and warrant of Attorney now on file in the "above entitled cause, on the 29th day of May, A. D. 1862, as fol-"lows, to-wit: "that Patrick Kavanagh whose name appears second "to the within judgment Note, did acknowledge the same to be his

"signature for the uses and purposes therein set forth," that said "Patrick Kavanagh, who was by this affiant refered to is Patrick "Kavanagh of the Town of New Lenox in said County, and that "he said Patrick above herein refered to at the date of said call "below stated, and of said affidavit resided in said Town of New "Lenox; that on the 27th or the 28th day of May, A. D. 1862, "being the day or day or two next previous to the date of said affi-"davit, this affiant called on said Patrick Kavanagh of said Town "of New Lenox, and said Note and warrant of Attorney above re-"fered to was then exhibted to him said Patrick Kavanagh of the "Town of New Lenox, and the point of a knife was placed upon "the second or middle signature to said warrant of Attorney in the "execution thereof, and there pointed out said signature above here-"in refered to was shown to him, the said Patrick Kavanagh above "herein designated, in the presence of this affiant, and he the said "Kavanagh above designated was then asked if said signature to "said Warrant of Attorney shown and pointed out to him as afore-"said, was his signature for the uses and purposes in said Warrant "of Attorney stated, and he said Patrick Kavanagh of the Town of "New Lenox then and there replied in the presence and hearing of "this affiant, that it was."

"Subscribed and sworn to before me
"this 14th day of October, 1862,
B. F. Russell, Clerk,
} Thornton G. Haines.

"That at said October term of said Court to-wit: on the 15th day "of October, 1862, the said parties to said cause by their respect-"ive Attorneys, by agreement submitted the said motions and "cross motions to the decision of the Court upon written arguments, "whereupon it was ordered by the Court upon agreement of said "parties, that either of said parties have the right to appeal from "the judgment of said Court upon filing the opinion and making "the decision of said Court to the Supreme Court of said State, at "any time within twenty days after filing the opinion of said Court "on said motions and cross motions."

"That at said December Term of said Court 1862, to-wit: on "the 2d day of December, 1862, the said Circuit Court filed the "opinion and made and entered the order and decision of said Cir-"cuit Court denying said cross motion, rejecting the evidence of "said proposed additional proof, quashing the execution issued upon "the said judgment and setting aside the said judgment, to which "opinion, order and decision of said Circuit Court excluding the "said proposed additional affidavit of said witness Haines, quashing "said execution, and setting aside the said judgment, the plaintiff "by his counsel then and there excepted and prayed that this his "bill of exceptions be signed and sealed by the judge of said Cir-"cuit Court, which is done."

"And this was all the evidence offered in said cause."

S. W. Harris [SEAL,]
Judge of the 11th Judicial Circuit.

And also certain proceedings of said Court of Record in said entitled cause of which the following is a correct copy of the record of said Court thereof to-wit:

"United States of America,
"State of Illinois, } ss
"County of Will,

"In vacation after a regular Term of the Circuit Court of said "County of Will, begun and holden at the Court House, in Joliet, "in said County of Will, on Monday, the Nineteenth day of May, "in the year of Our Lord One Thousand eight hundred and sixty-"two, being the third Monday of said Month."

"Present The Honorable Sidney W. Harris, Judge,

Benjamin F. Russell, Clerk."

"Attest B. F. Russell, Clerk."

"No. 3050, In the Matter of
Joseph E. Gougar.
vs
"Michael J. Kavanagh, Patrick Kavanagh
"& Patrick Kavanagh." } "Cognovit."

"And now on this day, came the said Plaintiff by R. E. Barber, "Esquire, his Attorney, and files his declaration in an action of "Trespass on the case on promises, against the said defendants and "files also a Warrant of Attorney, signed and sealed by the said "defendants, the execution of which is duly proven to the satis-"faction of the Court [by affidavit on file,] authorizing any Attor-"ney of any Court of Record to appear in this Court, waive service "of Process, and confess judgment in favor of the said Plaintiff and "against the said defendants, for the amount due upon a certain "proimssory Note annexed to said Warrant of Attorney; also for "the sum of Twenty Dollars, Attorneys fees, besides the costs of "this suit."

"Thereupon came also A. N. Waterman, Esquire, an Attorney "of this Court, in behalf of said defendants and files his cognovit, "by which he waives service of process, and confesses and consents "that judgment may be entered in favor of the said plaintiff and "against the said defendants, for the sum of One Hundred and "Eighty Dollars and Twenty-five cents, it being the amount due "upon said Note, including Attorneys fees. And the said Attor-"ney releases all errors in entering up this judgment [either in law "or equity,] or in issuing execution thereon, and consents to the "issuing of immediate execution on the same. It is thereupon "considered and ordered by the Court that the said Plaintiff have "and recover of the said Defendants, his damages for the said sum "of One Hundred and Eighty Dollars and Twenty-five cents, so as "aforesaid confessed, together with his costs and charges by him "about his suit in this behalf expended, and that he have execu-"tion for the same."

And afterwards to-wit: on the Seventh day of October, in the

"year of our Lord One Thousand Eight Hundred and Sixty-Two, "the same being one of the regular days of the October Term of "said Will County Circuit Court, for the year, A. D. 1862, and the "said Court being then duly organized and sitting for the adjudica-"tion of business the following among other proceedings were had "and entered of Record by said Court in words and figures follow-"ing to-wit:

Joseph E. Gougar. "No. 3050, vs "Michael J. Kavanagh, Patrick Kavanagh "& Patrick Kavanagh."	"Cognovit."

"Now at this day come the said Defendants by Randall & Fuller, "their Attorneys, and enter their motion to set aside the judgment "heretofore at the Vacation after the last May Term hereof entered "herein."

And afterewards to-wit: on the Fourteenth day of October, in the year of Our Lord One Thousand Eight Hundred and Sixty-Two, the same being one of the regular days of the October Term of said Court for the year A. D. 1862, and the said Court being then duly organized and sitting for the adjudication of business, the following proceedings, among others, were had and entered of record by said Court, in words and figures following to-wit:

Joseph E. Gougar. "3050, vs "Michael J. Kavanagh, Patrick Kavanagh "& Patrick Kavanagh."	"Cognovit."

"Now at this day come the said defendants by Randall & Fuller their "Attorneys, and enter their motion for an order of this Court to "correct the Records of the judgment of this Court entered in this "cause during the last Vacation of said Court. Thereupon comes

"said Plaintiff by his said Attorney and enters his cross motion for "leave to file additional proofs of the power of Attorney herein."

And afterewards to-wit: on the Fifteenth day of October, in the year of Our Lord One Thousand Eight Hundred and Sixty-Two, the same being one of the regular days of the October Term of said Court for the year A. D. 1862, and the said Court being then duly organized and sitting for the adjudication of business, the following proceedings, among others, were had and entered of record by said Court, in words and figures following to-wit:

Josepeh E. Gougar, "3050, vs "Michael J. Kavanagh, Patrick Kavanagh "& Patrick Kavanagh."	"Cognovit."

"Now at this day again, come the parties plaintiff and defend-"ant in this suit by their respective Attorneys, and on whose mo-"tion it is ordered by the Court that this cause be and it hereby is "submitted to the Court, and that written arguments be furnished "the Judge aforesaid within ten days from and after this date "And it is also further ordered that the judgment in this cause be "entered as of this present term, and that either party to this ac-"tion have the right to appeal from the judgment of this Court to "the Supreme Court of this State, within twenty days from and "after the filing of the opinion and decision of the Court herein, "upon filing a good and sufficient bond to be approved by the "Clerk of this Court."

And afterwards to-wit: on the second day of December, in the year of Our Lord One Thousand Eight Hundred and Sixty-two, the same being one of the regular days of the December Term of said Court for the year A. D. 1862, and the said Court being then duly organized and sitting for the adjudication of business, the following among other proceedings were had and entered of Record by said Court in words and figures following to-wit:

Joseph E. Gougar. "No. 3050, vs "Michael J. Kavanagh, Patrick Kavanagh "& Patrick Kavanagh."	"Cognovit."

"Now at this day come the said parties to this suit, by their respective Attorneys, and now is called up this cause for decision. "And the Court having heard the evidence adduced, also the arguments of counsel in the last Vacation of this Court, and being now "fully advised in the premises, it is ordered by the Court that the "Execution issued in this cause be and the same is hereby quashed, "and that the judgment heretofore entered in this cause be and the "same is hereby set aside, and that the said Plaintiff pay the costs "of this suit, and that the same be dismissed with leave to the said "Plaintiff to withdraw the papers on file herein."

"Thereupon on motion of said Defendants, it is ordered that said "Defendants do have judgment against the said Plaintiff, for their "costs in this behalf expended.

"It is therefore considered by the Court, that said Defendants "do have and recover of said Plaintiff their costs and charges by "them about their suit in this behalf expended, and that they do "have execution therefor. This judgment being entered as per "agreement of parties of Record at the last October Term of this "Court."

And also upon the 20th day of December, A. D. 1862, there was filed by the Clerk of said Court, an appeal Bond to the Supreme Court of said State, in said entitled cause of which said Bond the following is a true copy, to-wit:

"Know all men by these presents: that we Joseph E. Gougar, "James C. Kercheral & William Tonner of Will County, and State "of Illinois, are held and firmly bound unto Michael J. Kavanagh,

"Patrick Kavanagh & Patrick Kavanagh, in the penal sum of three "hundred dollars, lawful money of the United States, for the pay- "ment of which well and truely to be made, we bind ourselves, our "heirs and administrators jointly, severally and firmly, by these "presents:"

"Witness our hands and seals this 15th day of December, A. D "1862."

"The condition of the above obligation is such: Whereas, the "said above bounden Joseph E. Gougar, did on the 31st day of "May, A. D. 1862, enter up and recover a judgment by Cognovit, "in the Will County Circuit Court, in said State, in Vacation after "the May Term thereof, A. D. 1862, in the sum of one hundred "and sixty and 25—100 dollars, and also the further sum of "twenty dollars for Attorneys fees for entering up the judgment, "upon which judgment execution was duly issued, and, whereas, "on the 27th day of September, A. D. 1862, the said Patrick Kav- "anagh, of the Town of New Lenox, in said County and State; one "of the defendants in said judgment, filed in the office of the Clerk "of said Court, his petition for the stay of further proceedings un- "der said judgment and execution with an order of Hon. S. W. "Harris, Judge of said Circuit Court, granting an order for the stay "of further proceedings in said case until further order of the "Court."

"And whereas, at the October Term of said Court, the said Pat- "rick Kavanagh last aforesaid, entered his motion to said Court to "quash said execution, and set aside said judgment. And where- "as, the said Circuit Court at the December Term thereof, A. D. "1862, made and entered an order and decision sustaining said mo- "tion, quashing said execution, and vacating said judgment from "which said order and decision of said Circuit Court in said cause, "the said Joseph E. Gougar, has prayed an appeal to the Supreme "Court of said State."

"Now if the said Joseph E. Gougar, shall duly prosecute his "said appeal, and shall pay all damages, costs and judgment which "may be awarded, ordered and decreed by the Supreme Court up- "on the trial of said appeal, in case the said order and decision of "said Circuit Court in said cause shall be affirmed, then the above "obligation to be void; otherwise to remain in full force and effect."

"Joseph E. Gougar, [SEAL,]
"J. C. Kercheral, [SEAL,]
"Wm. Tonner, [SEAL."]

"Approved by me, this
"20th day of Dec., A. D. 1862,
B. F. Russell, Clerk."

And also a certain other paper which was filed in the aforesaid entitled cause, on the 27th day of September, 1862, of which the following is a correct copy, to-wit:

"To the Honorable Sidney W. Harris, Judge of the Eleventh Judi- "cial Circuit, of the State of Illinois:

"The Petition of Patrick Kavanagh, of the Town of New Lenox, "Will County, and State aforesaid, respectfully shows that on or "about the Thirty-first day of May, A. D. 1862, and in vacation "after the May Term of the Circuit Court, of the County of Will, "a judgment was entered in the Clerk's Office of the said Court, "in favor of Joseph E. Gougar and against Michael J. Kavanagh, "Patrick Kavanagh & Patrick Kavanagh, upon warrant of Attorney "and Cognovit, a copy of which is hereto attached. That your "petitioner is informed and believes that the said judgment is ir- "regular and illegal for the following reasons:

"That there is no law nor authority for entering any judgment "by Cognovit and warrant of Attorney in vacation in said Will "County."

"That the said judgment is for a greater amount than the cause of "action declared on."

"That it is uncertain from the declaration as to what the cause "of action is."

"That the instrument given in evidence is not the instrument "described in the declaration."

"That the judgment is for more than is warranted by the evi-"dence given."

"That there is no sufficient evidence of the signature of your "petitioner to the said Warrant of Attorney."

"That the said declaration does not appear to be sustained by "the evidence filed therewith."

"Your petitioner further shows, that previous to the entering up "of said judgment he was fully released from all responsibility up-"on said instrument, called a promissory Note, in said declaration."

"Your petitioner further shows, that the plaintiff in said judg-"ment has caused an Eexcution to be issued thereon, out of the "said Clerk's Office, and the Sheriff of Will County has levied on "the property of your petitioner by virtue of said execution, and "is now threatening to sell the same."

"Your petitioner prays an order for the stay of further proceed-"ings under said judgment, and execution until the further order "of said Court." Patrick Kavanagh.

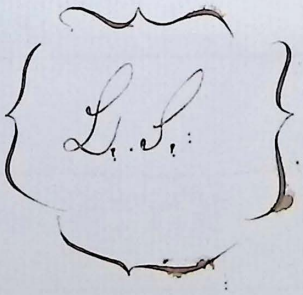
"State of Illinois, }
"Will County, } ss

"Patrick Kavanagh being duly sworn on oath says, that the

" facts set forth in the foregoing petition are true, according to his " best information and belief."

" Subscribed and sworn to before me, " this 23d day of Sept., A. D. 1862, B. F. Russell, Clerk." } " Patrick Kavanagh."

State of Illinois, County of Will, } ss I, Benjamin F. Russell, Clerk of the Circuit Court in and for said County, in the State aforesaid, do hereby Certify, the above and foregoing to be a full, true and correct copy of the Bill of Exceptions, Appeal Bond to the Supreme Court, and the Record of the proceedings of said Court, and of the files in the cause therein entitled; wherein, Joseph E. Gougar is Plaintiff, and Michael J. Kavanagh, Patrick Kavanagh & Patrick Kavanagh are defendants, as the same appears from the Records and files of said Court, now remaining in my said Office, and that said averments of the said Clerk in said Bill of Exemptions are true.



Witness, Benjamin F. Russell, Clerk of said Court and the seal thereof hereto affixed at office in the City of Joliet, in said County, this 25th day of March, A. D. 1863.

B. F. Russell, Clerk.

R. E. BARBER,
Att'y for Plaintiff.

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Gougar
v
Kavanagh

Filed April 20th 1862
L. Leland
Clerk

The People of the State of Illinois by the Grace of God free and Independent!

To all to whom these presents shall come Greeting!

Know ye that we having caused to be inspected the records and proceedings now remaining in the Office of our Clerk of our Circuit Court in and for our County of Will do find there certain proceedings by Bill of Exceptions in Words and figures following to Wit:

"State of Illinois }
"County of Will } ss," "Will County Circuit Court"
"of December Term 1862"

"Joseph E. Gonyar"
(vs) } "Cognovit"
"Michael J. Kavanagh Patrick Kavanagh & Patrick Kavanagh Jr."

"Be it remembered that at "the October Term A.D. 1862 of said Court to Wit on the ~~Seventh~~ "7th day of October 1862 the said defendants in the above entitled "cause by Messrs Randall & Fuller their Attorneys entered their "motion therein to set aside the judgment entered in said "cause in Vacation after the last May Term of said Court "upon the following Declaration, Note & Warrant of Attorney, "three several affidavits upon the back of said Note & "Warrant of Attorney, and Cognovit to Wit: ~~on the thirty first day of May A.D. 1862~~

Copy of Declaration filed in said cause ~~on the~~ 31st day of May A.D. 1862 to Wit

"State of Illinois }
"Will County } ss." "Will County Circuit Court"
"In Vacation after the May Term"

" in the Year of Our Lord One Thousand Eight Hundred
" and Sixty Two" (

"Joseph E Gougar Plaintiff in this
" suit by R E Barber his Attorney complains of Michael
" J Kavanagh Patrick Kavanagh and Patrick Kavanagh
" (the said Patrick last aforesaid being of the Town of Troy
" & the other Patrick aforesaid of the Town of New Lenox
" both in said Will County) Defendants who summoned
" precep &c in a plea of Trespass on the case on promises;
" For that whereas the said Defendants heretofore to Wit, on
" the 24th day of September in the year of Our Lord One
" Thousand Eight Hundred and Sixty at Joliet Ill.
" to wit at Joliet in the County of Will aforesaid made
" their certain promissory note and then and there
" delivered the same to the said Plaintiff, in and by
" which said note, said Defendants by the name, Style
" and description of M J Kavanagh Patrick Kavanagh
" Patrick Kavanagh jointly promised to pay to the order
" of said Plaintiff by the name style and description
" of Jos. E Gougar one year after the date thereof the sum of
" two hundred and fifty dollars with interest at the rate of
" ten per cent per annum after due it being for money
" actually borrowed (having deposited with him as
" &c &c &c &c &c &c &c &c &c &c &c &c &c &c &c &c &c &c &c &c &c
" and costs of said Sale) for value received, By means
" whereof, and by force of the Statute in such case made
" and provided, the said Defendants became liable to
" pay said Plaintiff, said sum of money mentioned
" in said Note, and being so liable, in consideration
" thereof, then and there undertook and promised to pay
" the same to said Plaintiff according to the tenor and
" effect, tone, intent and meaning of said note, to Wit,"

"at the place aforesaid"

"Yet the said Defendants not "regarding their said promises and undertakings, "but contriving, etc, although often requested so to do, "have not paid said plaintiff said sum of money but so "to do have hitherto wholly neglected and refused, and "still do neglect and refuse, to the damage of "said Plaintiff of Two hundred dollars, and therefore "he brings suit, etc"

"R E Barber Atty for Plaintiff"

Copy of Note & Warrant of Attorney being made of printed form upon the same page of a Sheet of paper filed by said Attorney in said entitled cause on said 31st day of May A D 1862 R Mct

"$250.00" "Joliet Ill., 24th Sept 1861"

"One year after date, we promise to pay to "Jos. E. Gougar or Order Two Hundred Fifty Dollars "for value recieved with interest at the rate of ten "per cent per annum, after due, it being for money "actually borrowed (having deposited with them as "collateral security, with authority to sell the same "on the non-performance of this promise, at auction "or private sale, either with or without notice at "their option, and to retain sufficient of the avails of "said sale to pay the above sum, interest and cost of said "sale)"

"M. P. Kavanagh"
"Patrick Kavanagh"
"Patrick Kavanagh"

"Know all men by these presents, that we are jointly "and severally indebted to Jos E Gougar the foregoing "promissory Note, bearing even date herewith the sum of"

"two hundred fifty dollars, with interest thereon at
"the rate of ten per cent per annum after the same
"becomes due and payable, it being for money actually
"borrowed and due one year after date."

"Now therefore in consideration of the premises
"we do jointly and each for himself make, constitute
"and appoint D. G. Grover or any other Attorney of any
"Court of Record to be our true and lawfull Attorney
"and to be the true and lawful Attorney of each of us
"irrevocable, and for us and each or either of us, and
"in our and each or either of our name or names,
"to appear in any Court of Record, or other Court having
"competent jurisdiction, in term time or in Vacation
"or at any time, in any of the States or Territories of
"the United States, or in any other country, at any
"time before or after the said note becomes due to
"waive the services of process and confess a judgment
"against us and each or either of us and in favor
"of said Jos. E. Gougar or any of them or their assignee
"or assignees upon the said Note for the above sum
"or, for as much as appears to be due according to
"the tenor and effect of said Note, with interest
"thereon at the rate of ten per cent per annum, to
"the day of the entry of said judgment according
"to the tenor and effect of said Note, together with
"costs including costs of protest, Fifty Dollars
"Attorneys Fee, and also to file a Cognovit for
"the amount that may be so due, with an
"agreement therein that no writ of error or appeal
"shall be prosecuted upon the judgment, entered by
"virtue hereof, nor any bill in equity filed to
"interfere in any manner with the operation of

"said judgment, and to release all errors that may
"intervene in the entering up of said judgment,
"or issuing execution thereon; and also to waive
"all benefit or advantage to which we or either of
"us are or may be entitled by virtue of any homestead
"or other exemption law now or hereafter in force,
"in this or any other State or Territory or District
"where judgment may be entered by virtue hereof;
"Hereby ratifying and confirming all that said
"Attorney may do by virtue thereof."
"Witness our hands and seals at Joliet this
"Twenty Fourth day of Sept. A.D. 1860"

"M. G. Kavanagh (Seal)
"In presence of" "Patrick Kavanagh (Seal)
"Patrick Kavanagh (Seal)

Copy of three several affidavits all written and made upon the back of said note & warrant of attorney and on said sheet of paper and filed as aforesaid in said entitled cause on said 31st day of May A.D. 1862 to wit

"State of Illinois }
"Will County } ss. "I. G. Haines personally known
"to me being duly sworn doth depose
"and say that Patrick Kavanagh whose name appears
"second to the within judgment note did acknowledge
"the same to be his signature for the uses and purposes
"therein set forth"
"Subscribed and sworn to before me } "I. G. Haines"
"this 29th day of May A.D. 1862 }
"D. Haven J.P. }

"State of Illinois }
"County of Will } ss" "William F. Barrett of said County
"being duly sworn deposes & saith
"that he is acquainted with Patrick Kavanagh of
"the Town of Troy in said County & with his hand
"writing and has seen him write and verily believes
"that said last made and bottom signature to the
"within and foregoing power of Attorney is the genuine
"signature of the said Patrick Kavanagh of
"said Town"

"W. F. Barrett"

"Subscribed & Sworn to before me }
"this 31st day of May 1862 }
"R E Barber" }
"Notary Public Will Co Ill" }

Ill

"State of Illinois County of Will ss,"
"William H Yarley of
"said Town being duly sworn saith that he is acquainted
"Michael J. Kavanagh late of said County & with
"his hand writing & has seen him write & verily believes
"that said first made signature "M J Kavanagh" to the
"within & foregoing Power of Attorney is the genuine signature
"of said Michael J Kavanagh"

"W H Yarley"

"Subscribed & sworn to before }
"me this 31st day of May 1862 }
"R E Barber" }
"Notary Public Will Co Ill" }

Copy of Cognovit filed by said Attorney in said entitled
on said 31st day of May A D 1862 to wit

"State of Illinois } ss. "In the Will County Circuit Court
"Will County } "In Vacation after the May Term A.D. 1862."

"Michael & Kavanagh & Patrick Kavanagh }
"v. Patrick Kavanagh } "Cognovit."
"vs
"Joseph E. Grager

"And the said Michael "& Kavanagh & Patrick Kavanagh & Patrick Kavanagh "Defendants by A. N. Waterman their Attorney come and "defend the wrong and injury, when etc, and waiving "the service of process, for plea say that the allegations in "the said Plaintiffs declaration contained are true that "the said defendants did undertake and promise in manner "and form as the said Plaintiff hath (above) thereof complained "against them; that the said Plaintiff (hath) sustained "damage by reason of the non-performance of the several "promises and undertakings aforesaid, in the sum of One "hundred and Sixty and 25/100 dollars, and they therefore "confess judgment herein in favor of said plaintiff, "including twenty dollars for Attorneys fees for entering "up the judgment in the sum of one hundred and "eighty dollars and twenty five cents and the costs "and charges by the said Plaintiff in this suit to be "taxed accordingly And the said defendants by A. N. "Waterman their said Attorney hereby agree that no writ "of error or appeal shall be prosecuted upon the judgment "entered by virtue hereof, nor any bill in Equity filed "to interfere with or in any manner prevent the "operation of said judgment."

"And the said defendants by A. N. Waterman their "said Attorney hereby release all errors that may intervene

"in the intering up of said judgment, or in issuing
"of Executive thereon and also consent that the
"execution being issued upon said judgment immediately"
"Dated May 31st 1862" "H A Waterman"
"Atty for Defendants"

"That at said October Term of said Court, the said
"defendants entered their motion to correct the record
"in said cause to wit on the 14th day of said month
"of October 1862 and thereupon the said plaintiff by
"R E Barber his Attorney entered his cross motion for leave
"to file additional proof of the execution of the power of
"Attorney filed herein and then offered in evidence under
"said cross motion the following Affidavit to wit"

"Will County Circuit Court

"Joseph E Gougar"
"No 30551" (vs) } "Cognovit"
"Michael J Kavanagh Patrick Kavanagh & Patrick Kavanagh

"State of Illinois County of Will ss"
"Thornton J Haines of said
"County being first duly sworn saith that he is the Witness
"who made affidavit before Dwight Heaven an acting
"Justice of the Peace in & for said County on the back of the Note
"& warrant of Attorney now on file in the above entitled cause
"on the 29th day of May AD 1862 as follows to wit; "that
"Patrick Kavanagh whose name appears second to the
"within judgment Note did acknowledge the same
"to be his signature for the uses and purposes therein
"set forth" that said Patrick Kavanagh who was by
"this affiant referred to is Patrick Kavanagh of the Town

"of New Lenox in said County, and that he said Patrick
"above herein referred to at the date of said call below stated
"& ~~affiant~~ of said affidavit resided in said Town of New
"Lenox; that on the 27th or the 28th day of May A.D. 1862
"being the day or day or two next previous to the date of
"said affidavit this affiant called on said Patrick
"Kavanagh of said Town of New Lenox and said State
"& warrant of Attorney above referred to was then
"exhibited to him said Patrick Kavanagh of the
"Town of New Lenox, and the point of a knife was
"placed upon the second or middle signature to said
"Warrant of Attorney in the execution thereof, and
"thus pointed out said signature above herein referred
"to was shown to him the said Patrick Kavanagh
"above herein dessignated, in the presence of this affiant
"and he the said Kavanagh above dessignated was then
"asked if said signature to said Warrant of Attorney
"shown & pointed out to him as aforesaid was his
"signature for the uses & purposes in said Warrant
"of Attorney stated, and he said Patrick Kavanagh
"of the Town of New Lenox then & there replied in the
"presence & hearing of this affiant that it was
"Subscribed & sworn to before me } Thornton J. Haines"
"this 14th day of October 1862" }
"B. F. Russell Clerk" }

"That at said October term of said Court to wit; on the
"15th day of October 1862 the said parties to said cause
"by their respective Attorneys, by agreement submitted
"the said motions and cross motions to the decision
"of the Court upon written arguments ~~of said parties~~
"Whereupon it was ordered by the Court upon agreement

"of said parties that either of said parties have the right
"to appeal from the judgment of said Court upon filing
"the opinion and making the decision of said Court;
"to the Supreme Court of said State at any time within
"twenty days after filing the opinion of said Court on
"said motions and cross motions"
"that at said December Term of said Court 1862 to wit,
"on the 2nd day of December 1862, the said Circuit
"Court filed the opinion and made and entered the
"order and decision of said Circuit Court denying
"said cross motion, rejecting the evidence of said
"proposed additional proof, quashing the executions
"issued upon the said judgment and setting aside
"the said judgment, to which opinion order ~~and~~
"& decision of said Circuit Court excluding
"the said proposed additional affidavit of said Nathaniel
"Haines, quashing said executions and setting
"aside the said judgment, the plaintiff by his
"~~by his~~ counsel then and there excepted and prayed
"that this his bill of exceptions be signed and sealed
"by the judge of said Circuit Court which is done
"And this was all the evidence offered in
"said cause"

"S. H. Harris (Seal)"
"Judge of the 11th Judicial Circuit"

And also certain proceedings of said Court of Record in
said entitled Cause of which the following is a correct
Copy of the record of said Court thereof to wit:

~~entered of record in said Court to Wit:~~

"United States of America
"State of Illinois } ss."
"County of Will

"In Vacation after a regular "Term of the Circuit Court of said County of Will, "begun and holden at the Court House, in ~~the~~ ~~City of~~ Joliet "in said County of Will, on Monday, the Nineteenth day "of May in the year of our Lord One Thousand eight hundred "and sixty two being the third Monday of said Month"

"Present The Honorable Sidney H. Harris Judge"
"Benjamin F. Russell Clerk"

"Attest B.F. Russell Clerk"

"No. 3157" "In the Matter of"
"Joseph E Gouyar"
as
"Michael J. Kavanagh Patrick Kavanagh
& Patrick Kavanagh" } Cognovit"

"And now on this day "came the said Plaintiff by R. E. Barber Esquire his attorney "and files his declaration in an action of Trespass on "the case on promises, against the said defendants "and files also a Warrant of Attorney, signed and "sealed by the said defendants the execution of which "is duly proven to the satisfaction of the Court (by "affidavit on file), authorizing any Attorney of any "Court of Record to appear in this Court, waive service "of Process, and confess judgment in favor of the said "Plaintiff and against the said defendants, for the "amount due upon a certain promissory Note,

"annexed to said Warrant of Attorney; also for
"the sum of Twenty Dollars, Attorneys fees, besides
"the costs of this suit."
"Thereupon came also A. N. Waterman Esquire
"an Attorney of this Court, in behalf of said defendants
"and files his cognovit, by which he waives service of
"process and confesses and consents that judgment
"may be entered in favor of the said plaintiff and
"against the said defendants for the sum of One
"Hundred and Eighty Dollars and Twenty five
"cents, it being the amount due upon said Note,
"including Attorneys fees. And the said Attorney
"releases all errors in entering up this judgment
"(either in law or equity), or in issuing execution
"thereon, and consents to the issuing of immediate
"execution on the same. It is thereupon considered
"and ordered by the Court that the said Plaintiff
"have and recover of the said Defendants his damages
"for the said sum of One hundred and Eighty Dollars
"and Twenty five cents, so as aforesaid confessed,
"together with his costs and charges by him about
"his suit in this behalf expended, and that he have
"execution for the same".

And afterwards to Wit: on the Seventh day of October
in the year of our Lord One Thousand Eight Hundred
and Sixty Two the same being one of the regular days
of the October term of said Will County Circuit Court
and the said Court being duly organized and sitting for the adjudication of business
for the year A. D. 1862, the following among other proceedings
were had and entered of Record by said Court in Words
and figures following to Wit:-

(over)

"Joseph O. Gougar"
"3058" vs } Cognovit"
"Michael J. Kavanagh Patrick Kavanagh & Patrick Kavanagh"

"Now at this day come "the said Defendants by Randall and Fuller their Attorneys "and enter their motion to set aside the judgment heretofore "at the Vacation after the last May Term hereof entered herein"

And afterwards to Wit: on the Fourteenth day of October in the year of Our Lord One Thousand Eight Hundred and Sixty two the same being one of the regular days of the October term of said Court for the year A.D. 1862 and the said Court being then duly organized and sitting for the adjudication of business the following proceedings among others were had and entered of record by said Court in words and figures following to Wit:-

"Joseph O. Gougar
"3058" vs } Cognovit"
"Michael J. Kavanagh Patrick Kavanagh & Patrick Kavanagh"

"Now at "this day come the said defendants by Randall & Fuller "their Attorneys and enter their motion for an order of this "Court to correct the Records of the judgment of this Court "entered in this cause during the last Vacation of said "Court Thereupon comes said Plaintiff by his said "Attorney and enters his cross motion for leave to file "additional proofs of the power of Attorney herein"

And afterwards to Wit on the Fifteenth day of October in the year of Our Lord One Thousand Eight Hundred and Sixty Two the same being one of the regular days of the October Term of said Court for the said

year A D 1862 the ~~f~~ and the said Court being then duly organized and sitting for the adjudication of business the following among other proceedings were had and entered of Record by said Court in words and figures following to Wit:-

"Joseph E. Gougar"
"3085" vs
"Michael & Kavanagh Patrick Kavanagh & Patrick Kavanagh" } Ejectment"

"Now ~~again~~ at this day
"again come the parties plaintiff and defendant in this suit
"by their respective Attorneys and on whose motion it is
"ordered by the Court that this cause be and it hereby is subm-
"itted to the Court and that written arguments be furnished
"the Judge aforesaid within ten days from and after
"this date And it is also further ordered that the judgment
"in this cause be entered as of this present term, and
"that either party to this action have the right to appeal
"from the judgment of this Court to the Supreme Court
"of this State within twenty days from and after the
"filing of the opinion and decision of the Court herein
"upon filing a good and sufficient bond to be approved
"by the Clerk of this Court"

And afterwards to Wit: On the Second day of December in the year of Our Lord One Thousand Eight Hundred and Sixty Two the same being one of the regular days of the December Term of said Court for the year A D 1862 and the said Court being then duly organized and sitting for the adjudication of business the following among other proceedings were had and entered of record by said Court

in words and figures following to Wit,

"Joseph E. Gouyon"

"3058" vs } Cognovit"

"Michael J. Kavanagh, Patrick Kavanagh & Patrick Kavanagh

"Now at this day come the said
"parties to this suit by their respective Attorneys and now
"is called up this cause for decision And the Court
"having heard the evidence adduced also the arguments
"of counsel in the last Vacation of this court and being
"now fully advised in the premises it is ordered by
"the Court that the Execution issued in this cause be
"and the same is hereby quashed and that the judgment
"heretofore entered in this cause be and the same is hereby
"set aside and that the said Plaintiff pay the costs of
"this suit and that the same be dismissed with leave
"to the said Plaintiff to withdraw the papers on file herein"

"Thereupon on motion of said Defendants it is ordered
"that said Defendants do have judgment against the
"said Plaintiff for their costs in this behalf expended"

"It is therefore considered by the Court that said
"Defendants do have and recover of said Plaintiff their costs
"and charges by them about their suit in this behalf expended
"and that they do have execution therefor This judgment
"being entered as per agreement of parties of Record at
"the last October term of this Court"

And also upon the 26th day of December A. D.
1862 there was filed by the Clerk of said Court ~~a bond~~ an Appeal
Bond to the Supreme Court of said State in said entitled
cause of which said Bond the following is a

True copy of Mitchell

"Know all men by these presents; that we Joseph
"E. Gougar, James E. Kercheval & William Tonner
"of Will County and State of Illinois, are held and
"firmly bound unto Michael J. Kavanagh, Patrick
"Kavanagh & Patrick Kavanagh, in the penal sum
"of three hundred dollars, lawful money of the United
"States, for the payment of which well and truly to be
"made, we bind ourselves, our heirs and administrators
"jointly, severally and firmly, by these presents."
"Witness our hands and seals this 15th day of —
"December, A.D. 1862."

The condition of the above obligation is such: Whereas, the said above bounden Joseph E. Gougar did on the 31st day of May, A.D. 1862, enter up and recover a judgment by Cognovit, in the Will County Circuit Court, in said State in Vacation after the May Term thereof, A.D. 1862, in the sum of One hundred and sixty and 25/100 dollars & also the further sum of twenty dollars for Attorneys fees for entering up the judgment upon which judgment execution was duly issued, and whereas on the 27th day of September A.D. 1862 the said Patrick Kavanagh of the Town of New Lenox in said County & State one of the defendants in said judgment filed in the Office of the Clerk of said Court his petition for the stay of further proceedings under said judgment and execution with an order of Hon. S. W. Harris Judge of said Circuit Court granting an order for the stay of further proceedings in said cause until further order of the Court

And whereas at the October Term of said Court the said Patrick Kavanagh last aforesaid entered his motion to said Court to quash said execution and set aside said judgment. And whereas the said

Circuit Court at the December Term A.D. 1862. made and entered an order and decision sustaining said Motion quashing said execution and vacating said judgment from which said order and decision of said Circuit Court in said cause the said Joseph E Gougar has prayed an appeal to the Supreme Court of said State

Now if the said Joseph E Gougar shall duly prosecute his said appeal and shall pay all damages, costs, and judgment which may be awarded ordered and decreed by the Supreme Court upon the trial of said appeal in case the said Order and decision of said Circuit Court in said cause shall be affirmed, then the above — obligation to be void; Otherwise to remain in full force and effect

Joseph E Gougar (Seal)
J. C. Kercheval (Seal)
Wm Sonner (Seal)

"Approved by me this 20th day of Dec A.D. 1862"
"B. F. Russell Clerk"

And also a certain other paper which was filed in the aforesaid entitled cause, on the 27th day of September 1862, of which the following is a correct copy to wit;

To the Honorable Sidney H Harris Judge of the Eleventh Judicial Circuit of the State of Illinois

The Petition of Patrick Kavanaugh of the Town of New Lenox, Will County and State aforesaid respectfully shows that on or about the thirty first day of May A.D. 1862 and in Vacation after the May Term of the Circuit Court of the County of Will, a

judgment was entered in the Clerks office of the said Court in favor of Joseph E. Gougar and against Michael J. Kavanagh Patrick Kavanagh & Patrick Kavanagh upon Warrant of Attorney and cognovit, a copy of which is hereto attached, that your petitioner is informed and believes that the said judgment is irregular and illegal for the following reasons

That there is no law nor authority for entering any judgment by cognovit and warrant of Attorney in vacation in said Mill County

That the said judgment is for a greater amount than the cause of action declared on

~~That the instrument given in evidence~~

That it is uncertain from the declaration as to what the cause of action is

That the instrument given in evidence is not the instrument described in the declaration

That the judgment is for more than is warranted by the evidence given

That there is no ~~evidence~~ sufficient evidence of the signature of your petitioner to the said Warrant of Attorney

That the said declaration does not appear to be sustained by the evidence filed therewith

Your petitioner further shows that previous to the entering up of said judgment he was fully released from all responsibility upon said instrument called a promissory note, in said declaration

Your petitioner further shows that the plaintiff in said judgment has caused an execution to be issued thereon out of the said Clerks Office and the Sheriff of Will County has levied on the property of your petitioner by virtue of said execution & is now threatening to sell the same

Your petitioner prays an order for the stay of further proceedings under said judgment and execution until the further order of said Court

Patrick Kavanagh

State of Illinois }
Will County } ss.

Patrick Kavanagh being duly sworn on oath says that the facts set forth in the foregoing petition are true according to his best information and belief

Subscribed & sworn to before me } Patrick Kavanagh
this 23d day of Sept. A.D. 1862 }
B. F. Russell Clerk }

State of Illinois }
County of Will } ss

I Benjamin F. Russell Clerk of

the Circuit Court in and for said County, in the State aforesaid, do hereby certify the above and foregoing to be a full, true and correct copy of the Bill of Exceptions, Appeal Bond to the Supreme Court, and the Record of the proceedings of said Court and of the files in the cause therein entitled: wherein Joseph E Gray is Plaintiff and Michael & Cavanagh Patrick Cavanagh & Patrick Cavanagh are defendants, as the same appears from the records and files of said Court, now remaining in my said Office, and that said averments of the said Clerk in said Bill of exceptions are true

Witness Benjamin F Russell Clerk of said Court and the seal thereof hereto affixed at office in the City of Joliet, in said County, this 25th day of March, A.D. 1863

B F Russell
Clerk

State of Illinois
Supreme Court. 3rd Grand Division

Joseph E. Gougar
Appellant
vs
Michael J. Kavanagh, Patrick Kavanagh & Patrick Kavanagh
} Appeal from Will

And the said Appellant assigns the following errors in the said cause

I The Court erred in dismissing the said suit

II The Court erred in vacating and setting aside the judgment entered in said cause

III The Court erred in quashing the said execution

IV The Court erred in setting aside said judgment as to all of said defendants

V The Court erred in quashing said execution as to all of said defendants

VI The Court erred in rendering judgment for costs against the said appellant

VII The ruling of the Court was against the law

VIII The ruling of the Court was against the evidence

IX

R. E. Barber &
Snapp & Breckenridge
Attys for
Appellant

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Joseph E. Gorgas
by
M. J. Kavanaugh
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