

No. 13301

Supreme Court of Illinois

Benedict

vs.

Slayer

To the Supreme Court of
the State of Illinois

The petition of Francis Sawyer respectfully shows, that he is ~~in~~ in the custody of the Sheriff of the County of Cook, Illinois confined in the County Jail of Cook County Illinois and restrained of his liberty under and by virtue of a Capias issued by the Clerk of the Circuit Court of Cook County aforesaid, directed to the Sheriff of said Cook County in an action of trespass on the case in said Court wherein Roswell S. Benedict William A. Hall Lewis S. Benedict and Henry C. Southern are Plaintiffs, and your petitioner is defendant: that said Capias was issued to the Sheriff of Cook County aforesaid, on the 22^d day of February 1859 and made returnable on the 1st Monday of March A.D., 1859; that your petitioner was arrested and imprisoned upon said Capias on the twenty second day of February 1859; that a copy of said Capias is herewith annexed.

And your Petitioner further shows, that on the 22^d day of February 1859, an affidavit upon which the Capias aforesaid was issued by the Clerk as aforesaid was made in said action and filed in the office of the Clerk of said Court on the 22^d day of February 1859. A copy of which affidavit is herewith annexed.

And your petitioner further shows, that the allegations and statements in said affidavit contained, so far as the same relate to the representations therein alleged to have been made by this Petitioner to Mr. A. Hall one of said Plaintiffs are untrue in point of fact: that your petitioner has not directly nor in any manner disposed of his property or any portion thereof with the intention

to defraud his Creditors

And your petitioner further shows that his imprisonment as aforesaid ^{for the following reasons} is illegal; that the said Capias was issued as aforesaid without proper cause and under circumstances where the law does not allow process or orders for imprisonment or arrest to issue: that the said affidavit of Henry C Southwick does not state facts sufficient to authorize the arrest or imprisonment of your petitioner, and is defective in substance.

And your petitioner further shows that the said Capias under which he was arrested as aforesaid, is defective in form in this to wit. The said Capias is issued in the name of Roswell S. Benedict, Wm A Hill Lewis S. Benedict & Henry C Southwick, plaintiffs instead of Roswell S. Benedict, Wm A Hill Lewis S. Benedict & Henry C Southwick as in the ^{affidavit} said Capias is made return made the 1st Monday of March which was not the first day of the Term And your petitioner prays that a writ of Habeas Corpus issue by this Court directed to the Sheriff of Cook County Illinois Commanding him to bring up your petitioner to be discharged on said Habeas Corpus.

That said ~~petitioner~~ affidavit does not show that there was any intention on the part of your petitioner not to pay for the goods purchased of said plaintiffs; that it does not appear that the plaintiffs have suffered or sustained any injury by means of these representations stated in affidavit; that it does not appear that the petitioner was in fact insolvent, but it does appear otherwise by the affidavit; that it does not appear that the representations stated in the affidavit were at the time they were alleged to have been made in fact untrue; that there is no sufficient statement of facts to show that the petitioner intended to deceive or defraud the plaintiffs; that there is ^{not} sufficient allegation of the petitioner disposing of his property & that said petition is otherwise defective.

Francis Sawstager

Francis Sawstager being duly sworn deposes and says that he is the petitioner above named; that said petition is true to the best of his knowledge & belief

Francis Sawstager

Sworn & subscribed before me this 29th day of May. A.D. 1859
Jno. P. Nichols
Notary Public



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

I, WILLIAM L. CHURCH, Clerk of the Circuit
Court of Cook County, in the State aforesaid, do hereby
certify the above and foregoing, to be a true, perfect and complete
copy of Verdict of Juries issued
in a certain cause now pending in said Court on the
Common Law side thereof, wherein Roswell S
Benedick Etal plaintiffs and
Francis Sammlay defendent

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this Twenty seven day of May A. D. 1857

Wm L Church

Clerk.

CIRCUIT COURT OF COOK COUNTY—CAPIAS.

STATE OF ILLINOIS, }
COUNTY OF COOK, } ss.

The People of the State of Illinois, to the Sheriff of said County GREETING:

We command you to take the body of

Francis Sammlay

if he shall be

found in your county, and safely *him* keep so that he be and appear before the Circuit Court of Cook County, on the first day of the next term thereof to be holden at the Court House, in Chicago, in said County, on the *first* Monday of *March* next,

to answer unto

Russell S. Benedict, William A. Neil, James S. Benedict & Henry C. Southwick

in a plea of

to the damage of the said plaintiff

as / *he* sa y in the sum of

Five Thousand Dollars

And have you then and there this writ, with an endorsement thereon, in what manner you shall have executed the same.

Witness, **WILLIAM L. CHURCH**, Clerk of our said Court,

and the Seal thereof, at Chicago in said County, this

Twenty-Second day of *February*

A. D. 1859

Wm L Church

Clerk.

D. No. Copy

of Cook County.

Term 185

VS.

CAPAIS.

I will hold the Defendant to bail in

Twenty-Eight
and Seventeen

Cents

MS Church CLERK.

Wm Womay & Kellogg

Executed by arresting the within named individual, known
as Sam Sawyer, and he is a free hand as secured
by law. I committed him to the jail of Cook County
the 2nd day of February A.D. 1854

John Mulgray. Sheriff
By A. S. Linhart. Deputy

for 40¢
per day Refd

Copy of Affidavit referred to in the foregoing petition
as being thereto annexed.

State of Illinois ss.
Cook County ss. Henry C. Southwick of the
City of New York being duly sworn
deposes and says, that he is one of the firm of
Benedict Hall & Co Merchants doing business in
the City of New York. And that said firm is composed
of Russell S. Benedict William A. Hall Lewis S.
Benedict and this Affiant

This Affiant further says that Francis Saw-
slayer is indebted to said firm of Benedict Hall & Co
in the sum of Twenty Eight hundred and Seventeen
dollars, And that said indebtedness is for merchan-
dise obtained from them by said Sawslayer. On the
third day of September Eighteen hundred and fifty
Eight. And on the twentieth day of the same month
and that said Sawslayer represented to said William
A. Hall for the purpose of obtaining a credit of said
firm that he said Sawslayer was then worth Twenty
thousand dollars, And upon representations so made
the said firm sold and delivered to ^{said} Francis Sawslayer
goods to the amount and value of Twenty six hundred
and ninety five dollars and twenty nine cents upon
a credit of four, six, and eight months dividing the
same in nearly equal parts. And taking notes therefor
and that on the 20th day of the same month said
Sawslayer obtained another bill of goods to the
amount of One hundred and twenty two dollars
and Sixty Eight cents from said firm

This Affiant further says. That since the day said
Sawslayer so obtained the goods from said firm

This Affiant has been to the City of Dubuque where said
Sawslayer resided and did business, and has learned
that he said Sawslayer was not in fact worth Twenty
thousand dollars and that said Sawslayer was
not in fact worth One thousand dollars over and
above paying his debts, and that the representations
so made by said Sawslayer were untrue in fact. And
made to deceive and defraud the said firm of Benedict
Hall & Co. and obtain from them their goods and property.

This Affiant further says that since the purchase so
made as aforesaid, the said Sawslayer has secretly
and fraudulently disposed of property to prevent
his creditors from reaching the same with the intent
to defraud his creditors.

This Affiant further says that whatever judgment
the said firm may recover against said Thomas
Sawslayer in this action is in danger of being lost
unless he is held to bail as provided by law.

Subscribed & Sworn to

before me this 22nd day of
February 1859.

Wm S. Church
Clerk.

Herry C Southwick

Exhibit Court Records
Benedict & Hall
3829
Thomas Sawslayer

Petition to Supreme Court
of Illinois as follows

Filed May 28, 1859
L. Leland
Clerk

13301
1859

John G. Stone

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

I, WILLIAM L. CHURCH, Clerk of the Circuit
Court of Cook County, in the State aforesaid, do hereby
certify the above and foregoing, to be a true, perfect and complete
copy of an affidavit

in a certain cause now pending in said Court on the
Common Law side thereof, wherein Rosewell D.
Benedick Et al are Plaintiffs and

Francis C. Caslayer is defendant

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this 27th day of May A. D. 1859

W. L. Church

Clerk.