

No. 13151

Supreme Court of Illinois

Watson

vs.

Reissig

71641  7

STATE OF ILLINOIS.

SUPREME COURT.

3rd Grand Division.

1860
No. 140.

Watson
vs.
Reising

Alonzo Watson
& Peter Northrup
Plffs. in Error

Charles Reising
Def't. in Error

In Supreme Court
of Illinois

Argument
for Plffs. in Error

Point 1st

It is not the practice of courts to grant such relief as was asked & granted to Reising in the Circuit Court in this cause on motion. A bill in chancery is the proper form of application in such a case.

5 Cowen Report 38. Lansing vs Quackenbush

1 Gilman 435 Day vs Graham

In the last cited case relief by motion was denied after an elaborate argument & reargument on petition for a rehearing by Mr. Butterfield of counsel & the party turned over by this court to his remedy in equity; where (says Scales J. at page 444) if a sale is vacated such terms may be imposed as may be equitable"

The time honored maxim of the Law is this; "nam quodque dissolvitur, eo modo quo colligatur"

Point 2^d

The 2 adjudications of the circuit of March 9th 1859 vacating the sales in the 2 causes & restoring the judgments as undischarged & unsatisfied was erroneous; Because, no notice of such intended motions had been previously served on the defendants or their attorney

The whole proceeding was entirely ex parte

2^d Gilman 281 Seaman vs Sawyer

Sawyer recovered judgment in Prairie Circuit in May 1838 Execution issued & Judgt. satisfied by sale of real estate

Law at Oct. T. 1840 obtained an order vacating
the levy & sale without giving notice to Sears
of the motion

Powell cited

1 Blackf. 53

1 Scam. 535

1 Wend 89.

Harlin 181

1 J. J. Marsh. 12

5 Cowen 38

6 Hill 14. 17

Per Curiam. Judgt. is erroneous, as no notice was
given to Sears, which we hold necessary
as the parties run out of court before the order made
Deft. had no opportunity of showing that there was no irregularity
in Execution, or in Sheriff's Conduct under it in selling
&c
Judgt. reversed

See also

1 Wendell 89 Dow on Bents

6 Hill 14. 17 De la Plaine vs Hitchcock

"A party is chargeable with knowledge of facts down to
Judgt. inclusive, But otherwise as to issuing execution
& proceedings under it see Bronson &.

2 Johnson Cases 120 Wardell vs Eden

Judgt. by Confession on Bond & Warrt. of Atty.
The Bailiff of N York as assignee of the judgt. moved to
vacate the Satisfaction on the ground that it was made
collusively by the parties to the judgt. after assignment
& in fraud of their rights as assignees

Notice of the mo. to vacate the vacatur entered
by the nominal plff. was served upon the Attorney
for Deft. named in the Warrant of Attorney by
leaving at his office with his brother
and also on Eden himself by leaving with his brother

The Court, "Both services cannot be good."

"Wherever there is an attorney employed the service must be on him."

"Service on Eden himself was irregular. But service on the attorneys brother being in the office was good." (Reason, Kent, & Radcliffe pp. 3.)

Lausling C.J. & Lewis J. dissented thinking service on Eden's brother good & that on the attys. to the bar.

After further hearing at 2 terms successively Court 3 to 2 adhere to the decision as above & vacate the vacatur which Wendell entered as fraudulent adjudging the Notice of Motion properly served upon the attorney for Deft. who signed the plea of confession that named in the Warrant of atty.

This case so far, as it is to be viewed as a safe precedent, decides that in a case like the present Reviser's notice of motion should have been made upon S. J. Tapp who was named in the Warrant of atty. & signed the plea confessing Deft. in Motion & Northrop atty.

There is no pretence made in Reviser's papers on his motion of March 9. 1859, that any service was ever made of notice of mo. upon either Tapp (nor upon the defendant personally.)

Now does the plff. then get along with this? imperative requisition of notice of the motion?

He answers, that he served notice upon atty. DeWolfe.

We make 2 objections to that answer. 1st Mr. DeWolfe was not Nathaniel Northrop's attorney for any such purpose. He was employed by

W. & O. to make a motion in the Cause after Indgt. to let in a defence by way of recoupment of damages.

W. & O. it seems had bought this engine & Boiler of Reimig warranted for \$3000. & gave this judgt. for bal. of the purch. price.

After setting up the engine they had to pay out \$300 more as they swear to make it go & this sum they wished to bring in to reduce the amt. of judgt. for breach of Warranty & made a motion for that purpose.

But the Mo. failed as they say because Dewolf left the Country notifying them that he could not attend any more to it.

But the judge & the party say he made it & it was denied by the judge.

Then after Reissig's 2^d Suit commenced to recover his \$300 bill for making the Warranted Engine go, D'Wolf it seems got from Judge Manierre an extension of time to plead; but neglected to plead & Indgt. went by default & Reimig had damages assessed by Court at \$278.⁵⁰

In the last case Dewolf's name is shown on the Index Docket as active in an attempt, unsuccessfully made, to get in a plea.

In the first case his name does not appear on any paper or proceeding whatever.

All attempts to litigate and get up pleadings & issues in both Causes fail.

The first Indgt. stands after a short stay & the last after a point looking towards an issue goes by default.

What under these circumstances is the office of Mr. D'Wolf? - In what relation does he stand to Watson & Northrop in the 2 Suits? -

It appears to us to be a fair answer to this, to say he did not become attorney for W. & H. except for a specified object, on failing to accomplish which, his attorneyship ceased leaving both causes just where they stood before.

He was no longer in any sense their attorney. But Mr. Tapt was in the first suit. —

And in the second there was none. —

We admit, if he had opened the cause & filed a plea as attorney; Then a new cause arising, He then could have become Attorney of Record & on a new judgt. recovered. He would have been the proper person to serve a notice upon touching the suit or judgt.

So in the second suit, had he pleaded. Then his appearance & plea of Record would show him to be attorney upon whom notices should be served. —

But he does no such thing. —

He approaches the Court & says "I am deft. think some of pleading in this cause, but am not ready yet so to do. I ask time to plead hereafter."

It is given;

But his default or def'ty. neglect to plead is taken as conclusive evidence that they either cannot or will not plead. & So have no occasion for an attorney on record.

They are therefore defaulted. —

How absurd it appears to say they have an attorney of record in that suit? in Mr. DeWolf's? —

2^d

But we have another answer

There was no service of notice of motion upon Mr. DeWolf & not the least pretense of evidence of any

The only sentence got up by Reissig, Atty.
in this matter is a scrap signed by Maydon a clerk
of the. Rumtee in these words

"Served above notice" &c. &c.
Who served? he does not condescend to state
Signed by Maydon. — This is all.

But not sworn to
nor is so much as any explanation made of this
singular & anomalous proceeding

Day
on
Graham } 1 Gilman 435

Having some further notes from this case
we insert the same here tho' applicable
mainly to the first point, partly however to 2^d.

In this case, the Sheriff had sold property worth
\$4000 (many parcels) in a mass for \$50.

Smundry other judges & creditors moved after ads
to set aside the sale. & sale under it as fraud on them.

In La Salle Circuit Judge Catron denied the mo.

Hence Writ of Error to Sup. Court

The Mo. in Circuit Court was made after due notice
to Haes as atty. for Graham upon record & as purchased
at the sale on the Execution.

Scates J. says at page
431. "Courts have ever vigilantly supervised the manner of
"the Execution of their process & given relief against the oppressive
" & injurious acts of officers, sometimes, \$1000000 and
"sometimes by bill. If an atty. or party purchase they
"are deemed to have had no. of every irregularity"

At page 442 Court also held, That the purchaser
"tho' ignorant & uninformed as to the defects. titles instead
"of bidding off all in gross on act of his ignorance was as
"bound to have examined the titles & bid accordingly with

"discrimination. Any other practice would lead to gross
"frauds & sacrifice of interests of other creditors looking to the
"same fund for payt. of their claims

At page 443 Cites 3^d Vesey & 170 where a sale was
set aside because the purchaser (plff.) sought more to
make a good purchase than to get his debt.—

at page 444 Cites Kind & Magee where the court
says expressly "Suppose a case of fraud made out. It
"could not try it in this summary form". Wells should have
"filed his bill in equity to have settled the question
"whether his judgment could be let in on a sale of the fraud or not. —

The Court therefore conclude page 445 "When plff.
"in execution purchases & before he conveys to another, we
"may set aside the sale upon Mo. (i.e. at the instance of other
"creditors injured thereby) But after conveyance to a 3^d person
"or where a stranger purchases, this court will not decide
"upon motion. And as Haas (the atty. general) the purchaser
"was a 3^d person not party the atty. purchasing in his own
"right we deny the motion; & leave the party to
"seek his remedy in a court of equity where if
"a sale is vacated such terms may be imposed as may
"be equitable. —

At page 453 Scates class by saying "We hold
"this sale voidable for irregularity & as circumstances
"exist which might call for terms & modified relief
"We send the parties to a forum (Equity) which may
"modify the terms of relief & impose conditions as
"Equity may deem just".

If such a conclusion be
not in case of a sale merely irregular how much
more where a party (as Reissig) is seeking to vacate
his own sale & purchase in which he himself & his
Attorney & his agent the Sheriff co-operate as a complex
party all aiming at the same end & the motion involves
a charge of fraud & deception practiced by 1 side agents.

in misleading another defendant his co-operator. The atty.
for the purchaser

Reissig complains of no wrong done
him by the depts. The question of wrong lies wholly
between him & the Sheriff his constituted agent in
effecting the purchase. —

If that question is to be tried now
between Reissig on one side & Watson & others
on the other, on motion & by affidavit — It is
great is the opportunity of fraudulent combina-
tion especially if (as shown here) the Sheriff and
Reissig have got their heads together to make
out to make ~~out~~, that (without the least intention
to quarrel) yet, ^{that} one mislead the other (& deceived
him) into a ruinous sacrifice by way of purchase? —

We submit, that Sheriff Hunt's affidavit in
this case shows he had ^a very small amount of material
to make out fraud from & his odds & ends put
together appear more ridiculous than very —

He says, he was served with a stay of proceedings
& copy of an affidavit & his return endorsed upon
the execution shows he called things by their
right names (— thus) I return this execution having
been presented with a copy of affidavit of depts.
& certificate of Judge staying proceedings" &
yet! his affidavit explanatory, which of course
we must suppose, was prepared in Chicago
(& this explains why they so little agree with his
return) makes him swear, that he supposed
the stay of proceedings was "an injunction"!!

We admit, however, it is a very harmless affi-
davit — We bring no railing accusation against
Mr. Hunt. — Even with the help of Mr. Raintree's
affidavit it all amounts to nothing — but evidence of the atty's re-
missness — Mus ridiculus nascitur, thom montes pascuntur

Point 3^d. The papers and affidavits on which Reissig's motion of March 9. 1859 was granted, show no fraud or deception practised by the Sheriff of Du Page on the plffs. attorney

On the contrary: The case which plffs. atty. makes out is one of mere negligence on his own part without the least cause for throwing off blame upon the Sheriff. —

In any event, The Sheriff was by Mr. Rountree the atty. constituted his & Reissig agent & attorney to bid in the property (or cause to be done) & the atty. & client would therefore be chargeable with all the Sheriff knew.

The issuing of the second execution (pluries) by Reissig atty. was conclusive evidence that he knew the return of the first, as otherwise the issuing of the last execution would have been irregular.

It is not shown that Reissig or his attorney took any pains or exercised any care or diligence with a view to obtain any information from the Sheriff or otherwise; & surely no obligation rested on the Sheriff to volunteer information.

Mr. Rountree's affidavit does not affirm, in any way, whatever, that he was ignorant of Savage Keith & Co. Execution but studiously avoids it. The absence of such an affirmation at the place where he ought to have inserted it, if true, (but, & contra, manifestly tries to have it taken as true by insinuation or implication, tho' his premises do not sufficiently nor at all imply it) is evidence sufficient that he knew all about it.

It is clear from all the facts in the case that
Reissig's motive in wishing to repudiate his judgment on execution was solely because the fire had diminished his chances of making a Large Speculation, tho' he could still have got his pay & perhaps more.

This motive he carefully concealed from the Court by neglecting to state the time the fire occurred, without the knowledge whereof its materiality or immateriality could not appear. Instead thereof, a false & unfounded reason is assigned, as ground for the motion to wit, that the Sheriff deceived and misled him.

But Mr. Reissig selected his own ground for relief & cannot now be permitted to change it.

Alloyata & Probate must agree
5 Gilman 499 Mackay & Bristeth
11 Ills. 194 Morgan & Smith
Do. 361 White & Morrison
12 Ills. 26 per Caton J. "The bill

"was not framed with a view to obtain
"relief on that ground" (H. & C.
"takes his position & then must abide)

His point is this

Ramtree says as Reissig att
supposing that Sheriff Hunt had preserved his first
copy on the execution stayed by Judge's order
he obtained & sent to Sheriff a pluries execution
& directed him to sell the property so first levied upon &

bid in same in name of self. in satisfaction of
the Executions.

This was at Oct. Term 1858 immedi-
ately after stay of execution vacated

& that Savage Keith & Co. also on Oct.
Term Judgments by them recovered issued an execution
levied upon the same property. -

That Reising also obtained another judgment
at Oct. Term & issued execution immediately with
directions to levy on the same property. -

Now the Complaint is that he has since
learned that Sheriff Hunt on the order to stay pro-
ceedings on the T. Executions (issued before the stay)
released the levy

and then levied Savage K. & Co.'s ex-
ecution on the same property before the order to stay was dis-
solved. -

And didn't inform Rountree (how we should
expect 'didn't inform him the Savage K. & Co. had
got in before him, but it is not that) didn't in-
form appellant or Reising either, of his releasing
the first levy

But wholly kept them in ignorance
of (how the mind of reader is again prepared to expect
the allegation of 'ignorance of Savage K. & Co. in
levy which certainly would a little strengthen the
show of his case' but no such thing is pretended
whence it is fairly inferrible he did know it tho'
not perhaps from the Sheriff) "kept them in ignorance
of his neglect to faithfully keep & preserve the original
levy

And thereby Mr Rountree says he was
deceived as to the true condition of the several
executions & the levy so made. -

Wherefore he says (for his affidavit)

is intended to be highly argumentative as well as statistic) -

Wherefore he says in consequence
1st of Sheriff's neglect to preserve his first levy &
2^d his keeping Reising & his Atty. in ignorance
of said true condition of said Levy & Sale
until after the sale made -

He desires the Sale on his 2^d execution
to be vacated & his judgments restored unsatisfied
and undischarged =

He says also if he had known of the release
of first levy he would not have ordered the
sheriff to bid in the property for the plaintiff

Pray why? I ask? The facts we can gather up
show he wishes the reasoning to be taken
as if it stood thus "If I had known
the first ex^{ce} was returned & had also known
that Savage Keith & Co. had got in ahead of
us, I would not have so instructed the off^{icer}

(Without venturing to swear that he did not
^{know} of Savage Keith & Co. ex^{ce} he clearly wishes to have
for his argument sake, the benefit of that ignorance
imputed to him. The amount of all seems to be

that Ramtree neglected himself & attended
to the business - Made the Sheriff his
agent to purchase for Reising or to get
some one to do so & now, because by his
negligence, his purchase is not exactly such
as he is pleased with, he asks the Court
to throw all the blame upon the Sheriff (who
was guilty of no fault in reality) & let

Reising have his m^{one}y back to try again

He also says the property is not worth over \$300

(Quere) why then did Mr. Ramtree by
his own showing, instruct his agent the Sheriff to bid

for Reissig \$810.⁰⁸/₁₀₀ on the first execution and
 \$309.⁷²/₁₀₀ on the 2^d Execution
 making in all \$1119.⁸⁰/₁₀₀ in full of both Executions
 Why? — The court will see the fine is only alluded
 to in the closing line or 2 of Ramtree's affidavit
 without circumstance of time when it occurred
 and that omission is clearly designed
 lost, if it should be stated truly, the Court
 might suspect his motive in wishing to
 repudiate the purchase was the loss of the
speculation — rather than the deception &
misleading palmed off upon them by the
 Sheriff in purchasing \$300 worth for
 \$1119.⁸⁰/₁₀₀ besides having Savage, H. & Co.
 purchase to provide for some way —

If the last fact stated (Savage, H. & Co. debt)
 was indeed & in truth a real climax of ^{their} misfortune
 it would seem as if they were bound at least to say
 as much as, that they were ignorant of it, when
 & before they purchased. But of this there is no
 semblance of any statement tho' an elaborate
 effort ^{is made} to have the Court take it by implication

Still more effectually, with the reasoning of
 Mr. Ramtree on these facts he exploded when
 we come to see in our 5th point that
 this whole story as regards the releasing of the
 first levy to this damage is an entire mistake
 in point of fact, as the Sheriffs levy on that
 first execution turn out to have been a levy
 not on the same property which was sold on
 all three Executions, but on property which
 Watson & Northrop never owned, indeed on
 property which never existed: It was negative
 & a void levy, which could hurt nobody to release

Point 4th The affidavits & no. of motions & all the papers
on which the motions of March 9. 1859 were
grounded are entitled

Charles Reinig
or
Alanson Watson &
Peter Northrop

Whereas the judgments
restored are all (& all the executions except
one) and both the judgments of March 9.
1859 to restore them as undischarged are
entitled in a wholly different cause

Entitled
Charles Reinig
or
Alonso Watson
& Peter Northrop

2 Cowen Reports 509. Humphrey vs. Canale
where Court say The objection is fatal
There is no cause in existence as the one
mentioned in the title & such an affidavit
is never received The party cannot be convicted
of perjury on such, tho he swear falsely

Point 5th

The 2 executions Levy & Sales on Reissig's exⁿ as appearing of record (and the same is true of Savage Keith & Co.'s execution a copy of which is given) were upon Lots 1 & 2 in Block 3 in M. L. Wheaton's addition to Wheaton

The first execution of Reissig (the alleged release whereof by the Sheriff is the injury complained of) was (E contra) not upon the same but upon Lots 2 & 3 in Block 1 in M. L. Wheaton's addition to Wheaton #

See note at }
Close of this point }

It will thus be seen that the grounds of Reissig's Complaint against the Sheriff his agent & for which he asks relief by vacating the sales & restoring the judgment, has no reference or was entirely inapplicable to his 2^d Judgment & Sale under it. That Sale by his own showing was entirely regular & could not be bettered. —

And as to the first judgment & sale under it the ground of his Complaint is that the Sheriff by mistake released the first levy by returning the Executions Supposing the order to stay was an injunction!! & that by this mistake he is injured in this to wit That but for that mistake he would have got an earlier title (ahead of Savage K. & Co.) to the same property Lots 1 & 2 Bl. 3. by virtue of his first levy on Lots 2 & 3 Bl. 1. —

The impossibility & entire error of this conclusion shows that he sustained by his own showing No Damage whatever by the Supposed error. —
Now the Court will observe

that the grand climacteric of Mr. Reese's grievance is not that he has not got the identical Lots and premises he had his eyes upon

But it is this, that he has not got them by & through his first levy, which he complains of the Sheriff for releasing, (the levy he made on his first Ex^r.) "which the Sheriff returned & kept him in ignorance of its return & neglected to inform him of the true condition of the levy & sale till after the sale"

I have before observed, that this complaint was wholly inapplicable to his 2^d Ex^r & sale under it

It is on the first Ex^r & sale on that only, this complaint is made the gravamen of which is, that tho' he gets the identical Lots & property he wished to purchase he does not get it by & through a levy made by mistake of the Sheriff on property wholly different. -

There is no pretence set up in any affidavit that Sheriff Hunt ever gave any wrong information or indeed any information whatever - Nor that Reese or his attorney ever asked for information of any description, from the Sheriff or any one else, or that they were ever misinformed.

But he released the levy first made, and returned the first execution supposing by mistake that the stay was an exemption & kept them in ignorance of this release by not informing of his return notwithstanding they took so much notice of it as to go to the clerk & get a new execution!! Very remarkable indeeds!!!

On this fumble or pardon he predicates a charge that he was deceived & kept in ignorance

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and he should have added Kept in ignorance of an immaterial fact.

Why he issued the second or pluries execution we are not told. Except that the allegations are pregnant with a desire that it should be inferred, that the sole object of the pluries execution was to cause the Sheriff to sell on the former execution, which is certainly quite a novelty in practice.!!

The first levy was on wrong Lots by number & Block & addition

It was Watson & Parthrop's Mill Lots that were in demand -

There were all finally correctly levied upon on all 3 executions & sold in due order & worth as proved \$9000 to \$10,000

Again If Roising or Ramtice wished to retain the first levy on Lots 2 & 3 Block 1 Why did not Mr. Ramtice move the court to order the execution to be taken off from the files & returned to the Sheriff "with his levy endorsed" (as he swears it was & remained & still remains!!!) & to order the Sheriff to execute it by sale accordingly -

It was not released.

Answer - That would only be to make bad worse.

The levy was erroneous. The mill property was all they wanted on Lots 1 & 2 Block 3

Accordingly Ramtice knowingly (I mean knowing what correct practice requires on the return of an execution) takes out a pluries execution on his first judgment & a pifa. on his 2^d.

proceeds to sell making the Sheriff his agent
to bid in the property for Reimig

The idea of fraud deception & circum-
vention here is too puerile & senseless to be
treated seriously -

I can conceive of no way in which
Carnum could suppose such affidavits could
mend the matter for his client unless upon
the supposition, that the Court would grant
his motion without reading his papers over
carefully deeming it sufficient if they
appeared to be duly spiced with the words
fraud deception, negligence of officer
kept in ignorance especially in case of obscure
merits there could be no doubt because nobody
dared to appear in opposition -

To suppose otherwise would be to undervalue
the sagacity of the ^{circuit} Court whenever they do sift
things down to the foundation -

Note to come in note. The affidavits of the parties on both sides by inadvertence take no notice of this discrepancy, nor do those of their
witnesses. They all proceed upon the supposition that the Lots
finally sold on the 3^d executions were the same that were levied upon by the
first execution which was returned to the clerk's office. The affidavits
are all otherwise in this point correct, that is - they all refer to the Lots
by description upon which Watson & Worthrop's Mills were situated
in the village of Wheaton - The returns of the Sheriffs Lewis & Salas
on the executions correct the error by the Record & show as
the Court will see that the supposed releasing of the first
levy even if it had taken place was harmless of injury
and could hurt nobody - because it was a mistake
We subjoin Co. Surveyors Map, (not as evidence as this is not a court of orig-
inal jurisdiction) but to show the error of shff. There were no doubt

Point 6th

The records & files of the circuit court in these suits were wrongfully mutilated & altered, to meet the views of Keimig or his attorney, after the defendants made their motion to vacate the order of March 9th 1859 - By adding to Harry & Haydens certificate of service the official certificate of an oath administered by W^m D. Church clerk of the circuit court on 15th June 1859

Aside from its untimeliness (this court will see it was done on the identical day on which Mr. Coventry & Rountree admit service of notice of this motion) the affidavit & jurat amounts to nothing & because the body of the afft. does not state who made the service.

It is a mere scrap an unfinished incomplete sentence on which no body could be convicted of perjury.

So the paper stood before Judge Manierre on the 9th of March 1859 when these motions were decided.

But now on 15 June 1859 (see admission) we serve upon Coventry & Rountree no. of mo. to vacate the order of 9th March 1859 accompanied with copies of an afft. showing the irregularities & especially this that there is no proof of service of no. of motion & that Haydens certificate is wholly unknown

Immediately Mr. Haydon goes to the clerk who adds his certificate of Jurat dated 15 June 1859

& This paper now goes before the circuit judge again with a jurat appended to it - And here we complain as we think

we have a right to complain

That any judge who on the first motions of March 9th would be so careless as not to notice that there was no evidence of service of notice of the motions prior to March 9th would by no less degree (or greater) of the same carelessness now fail again to notice & observe that this jurat so recently put on, was nothing but a felix de se telling to his own no falsehood. But calculated only to draw a film over his eyes

We had no opportunity to call the judge's attention to this, for an oral argument he would not hear.

And now constat, but that his Honor may have denied our motions on the ground & reason that Watson & Warthrop had got up a false clamor about not having served with notice & so! here it is all sworn to.

This shows a few things, worthy of being noted here.

- 1 It is a bad thing for a judge or court to have so many causes to decide that they cannot even afford to hear counsel with their ears; but must compel them to rely on written arguments.
- 2 It is still worse in such a case (if the fact should also be true) that they cannot even vouchsafe so much as carefully to read & understand the arguments.
- 3^d It is still worse & worse, (Confusion itself is worse compounded) if the Records & files of the Court may be so tampered with as to become worthless as a protection to Sutors.

The wrongful interpolation of this jurat by the clerk on the 15th of June 1859 on an old record was unknown to defendants attorney & undiscovered until they stumbled on it in preparing the bill of Exceptions.

How much influence if any it may have had on the decision of the motions no man can tell. Suffice it to say It was unauthorized; It was extra judicial; It was calculated to deceive & mislead and it gives an offensive suspiciousness to that which ought to be above all suspicion.

Branch of 3^d point

On an branch under the 3^d point above we have averred that Reissigs motive in now moving the repudiation of his purchase was covertly concealed tho plain enough to be discovered to wit, that the fire had diminished the chances of a Large Speculative Investment.

Let us see in that view what the Lots would have cost him at the time bid off (Dec 11. 1858)

Amt. of Savage Keith & Silman's purchase
This we must put in because he would be under the necessity to purchase it for his own protection

Next. Reissigs 1st Expurchase
" " 2^d LO.

\$ 734. 62
810. 68
(309. 72)

Amt. 3^d purchase (over) \$ 1854. 42

Acct. 3 purchases not over \$1854.42
Add one year Interest at 10 percent 185.44
Total Cost One year from purchase \$2039.86

Now let us take the value of premises

1. Before the fire

Value of Mills as sworn to by Watson
& Northrop & Sutcliffe } \$9000.00
Value of ² Lots \$300 each as sworn to
by Watson & Northrop & W. L. Wheaton } 600.00
Total \$9600.00

Deduct the above sum of Cost 2039.86
Clear Speculative Margin = \$7560.14

2. After the fire

Value of Engine & Boiler as sworn to
by Watson & Northrop & as appraised
after the fire by Reissig partner
H. Scoville of Chicago & A. C. Akerly
of Springfield (2 machines) } 1500.00
This is certainly a very fair estimate
for its cost \$3000 paid Reissig for it
(besides \$300 more added to make it go)
& the Examiners Scoville & Akerly gave as
their opinion that \$500 expenditure would
restore it as good as before the fire -
(But it was 2 years old & this accounts for
this appraisal) - Add value of Lots 600

Total Value after fire \$2100.00
Deduct the above sum as cost 2039.86
Clear Speculative Margin is reduced to \$60.14

Now it would do for Reissig to take
up a new line of argument & say It's a hard
case to put on me (a manufacturer) these old
duds of my own make even at a sum so near

the real value & possibly loss

Any person at all inclined to indulge a small degree of inventive wit, might even suspect & as well, throw in his teeth, that it was possibly no more than a fair retribution for cheating in the first bargain & warranty as to the goodness of a machine which when set up would not go until \$300 more was put upon it, & then getting an unjust judgment for that \$300 & selling the machine upon it -

But the gite of the case lies here

Revising for his motions of March 9. 1859 selected & chose his own ground & he put his claim to relief upon the sole ground of fraud & the misleading of the Sheriff whereby he says he was injured & the judge granted him relief on that ground solely without any notice of the motions to the dependants or their attorney -

He even studiously concealed the materiality or immateriality of the plea by not stating the time it occurred lest that motive should be suspected -

He is therefore bound by the position he has taken -

Does he wish now to be permitted to say, that was all a sham fight? -

We admit it truly to have been so - No one can doubt it. -

He wishes therefore now to put it on different ground which his advisers have made out for him & that in the benefit of his order & judgment the wrongly & hastily granted and granted in defiance of all facts

The speculation he says, was fine before
the fine but a very flat & insignificant thing after.
"The bill was not pressed for relief on that
ground" Allegata & probata must agree

But manellous as it may seem
his Honor the Circuit Judge does adopt this
identical line of reasoning as hypothetically
good in excusing the want of notice of
the motions of March 9. in case he ought
to have allowed DeWolfe's authority to have
prevailed & he says in his opinion on file
"The defendants are now before me (i.e. on this
their mo. of June 20. 1889) now before me
with notice" — that notice which they gave
themselves by moving of their own heads for relief
against ~~the~~ orders which they say are unjust,
Which fairly paraphrased seems
to us to amount to this "To be sure you had
no notice of the motions (we will assume that
for arguments sake) & I had no business
therefore to saddled you with those old
satisfied judgments; Suppose it all to be
even so; But now forsooth, you, uninvited
have strayed into my Court & so being here
in Court face to face, as notice now would be
a work of Supererogation, now I adjudge
you now to have the equivalent of notice —
you have taken notice of your own heads
& I'll put it to you now so that it shall
stick this time if it could not before so
Go out of court Saddled & hooded &
Spurred

This species of Logic would seem
to us of the same piece, with that with which

Judge Jeffries of excellent memory since
on a former time, puts it to the Sanitary Pastor
"that old Kidderminster rague" as he called him

The circuit Court orders of 9 March
1859 men as we insist right or wrong
must stand or fall by their own intrinsic
merits or demerit -

Our clients insist upon giving
to the full, all the reasons that exist for vacating
them -

The authority of Courts is not to be exercised
arbitrarily but, according to the established
formulas of the Law: & in view of the maxim Stare decisis.

And when so exercised,
without fear favor or affection, it commends
itself to every man's Conscience & produces no
heart burnings, upon which power of the Court
it may fall -

It protects alike the powerful
& the weak, the rich & the poor

It is like the Sun rising on
a cloudless morning

or like his clear shining
after rain

Point 7th The motions of Defendants to vacate the orders
of March 9. 1859 were submitted to the Court
on both sides on 20th June 1859 (an oral
argument being refused by the Court)

And yet (I refer to this as appearing
on the record) the Court permits Reassigned atty.
to keep on loading down the files with new

affidavits down to July the 5th 1859
when (or on the next day) the Court announces its
decision over ruling the motions last made

And the Court insist on inserting all these
affidavits in the bill of Exceptions; affidavits
which we never saw & never had a chance to answer!!

We charge & insist that this is irregular
and that after a cause is once taken by the Court
Subjudice the parties are no longer in Court
except to hear Judgment

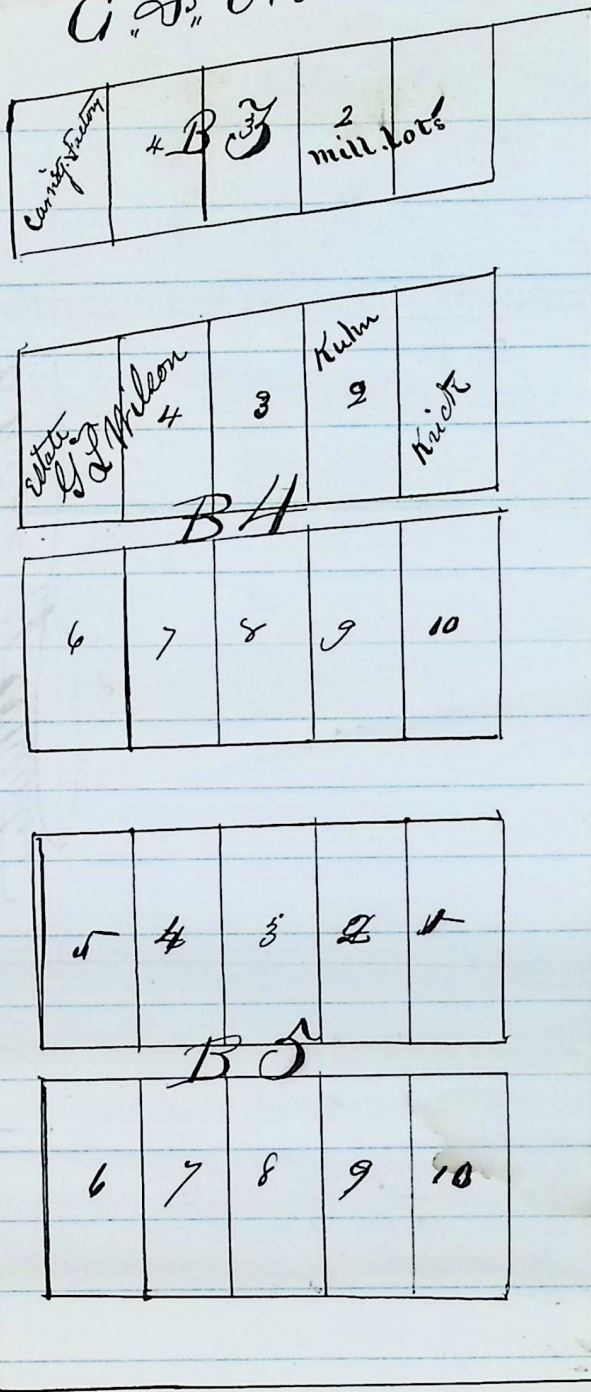
N. B.

The judges of the Supreme Court are
requested to take notice that by
stipulation at the foot of the bill
of Exceptions they are to give
judgments in Both of the Causes
The title of both is the Same

All which is respectfully Submitted
Hather Tapp & King
Attorneys for

Watson & Northrup
Plffs. in error

C. & C. U. R. R



There is no Block No 1 in W. L. Wheatons
Addition to the Town of Wheaton

2^d Exth was misled on the right description of Property
where the mill stood as you can see by the Plat

The Sheriff must have made a mistake in the first Ex
as you see he must have meant Lots 1 & 3 in B
3, instead of Lots 2 & 3 in Block 1

J. H. Vallette Co Surveyors
Dec 10 1891

Diagram

(N. L. Wheaton's Add.ⁿ
to the Town of Wheaton
#)

In Supreme Court

Mason & Nathrop
vs
Charles Reising

Written Argument

Mathew Tappan King

for App in Err.

Alouzo Watson
& Peter Northrup
Plffs in Error

vs
Charles Reissig
Def. in Error

Supreme Court
of Illinois
3d Grand Division

It is hereby stipulated
on the part of the defendant in error
Charles Reissig, in the above cause that
the issuing & Service & return of the writ
of error is waived and that the Clerk
of the Supreme Court at Ottawa enter
the appearance of said defendant on
filing this Stipulation
Dated April 3d 1860

Corning & Rountree
Atty for def in error.

We appear as attorneys for plff in Error
Bill of Exceptions heretofore filed in the
Circuit Court of Cook County and
Transcript thereof & of the whole record
heretofore filed with the Clerk of Supreme
Court at Ottawa

Mather Tapp & King
Atty for plffs
in error

70
Supreme Court, Ill.
3^d Grand Division

Monzo Watson &
Peter Northrop
Mfgrs. in Error

^{vs}
Charles Reising
Deft. in Error

Depts. Appearance
in Error

Filed April 6, 1860
L. Leland
Clerk.

Jameson & Morse, Printers, 14 La Salle Street, Chicago.

SUPREME COURT.

ALONZO WATSON &
PETER NORTHROP,

PLAINTIFFS IN ERROR,

vs. . .

CHARLES REISSIG,

DEFENDANT IN ERROR.

*Writ of Error to Cook County
Circuit Court.*

ABSTRACT OF THE RECORD.

The bill of exceptions in the cause of

CHARLES REISSIG,

vs.

ALONZO WATSON &

PETER NORTHROP,

In the circuit court of Cook county, states, that a judgment by confession was entered on a note and warrant of attorney, on the 29th Sept., 1857, for \$758.81 damages besides costs, in the above entitled cause, A. C Coventry, Attorney for the Plaintiff, on the Record, L. B. Taft, Attorney for Defendants, on the Record.

The first execution, a writ of *fiery facias* was issued to the sheriff of Du Page county; tested 26th Feb., 1858; received by sheriff, March 25th, 1858; and levied by him, May 22d, 1858, on lots No. two and three, in block No. one, in W. L. Wheaton's addition to the town of Wheaton in Du Page county. To which the sheriff returned Aug. 20, 1858, that he was presented with a copy of affidavit of defendant and certificate of judge, staying proceedings. Execution returned and filed Aug. 20, 1858.

A second execution was issued to the same sheriff on the same judgment. This was received, Nov. 13, 1858, tested the 12th of the same month, and on the 14th of same month was levied on lots one and two in block No. 3 in W. L. Wheaton's addition to Wheaton Village, Du Page

If the plaintiff, constituted the sheriff
his agent to receive the title & to bid
off the property on his execution is he
not most assuredly bound by the acts
of his agent, namely defendant has
perpetrated a fraud on the agent or
the agent has concealed his title the
defendant for that purpose. As to the
defendant and other judgment creditors
what right has he to complain of the
fraud of his agent.

Beckwith

I submit that no appeal or writ of
error lies to this judgment to setting
aside the sale.

2 It appears on the second application
that the party was properly served be-
fore the first hearing, and there was
no necessity to vacate the second first
order & then reenter it, because there
was not evidence of service on the
first hearing while there was such
evidence on the second hearing —

3 The attorney denied that he had appeared as
opposed to record and there is no evidence
to deny that he was a general attorney
in the case.

4 The return of the execution did not

affect the lien which had been obtained by the levy - It is not similar to any one personal property. The stay & return left the lien in full force, & undisturbed, & the sheriff was compelled to sell after the stay had expired.

County, and the same were thereupon sold by said sheriff, and bid in by Charles Reissig, the plaintiff in above cause, for \$810.08, the amount of debt and costs and a certificate of sale, was duly made and filed by the sheriff in the proper office. The sale was on Dec. 11, 1858, and said execution was thereupon, on 20th Dec. 1858, returned by said sheriff and filed in the clerk's office of this court, as satisfied in full by sale of real estate to the plaintiff.

Another execution or writ of *fiery facias* on a second judgment of said Charles Reissig against the same defendants, for \$278.50 damages, besides costs, (in a suit commenced by Summons) entered 22d Oct., 1858, was received by the sheriff of Du Page county, Oct. 29, 1858, and was levied Nov. 2d, 1858, on same lots No. one and two, block No. three in W. L. Wheaton's addition to the village of Wheaton, which on 11th of Dec., 1858, were also sold to Charles Reissig the plaintiff, for the amount of execution and costs, \$309.72, and certificate filed for record, and on Dec. 17, 1858, sheriff returned the same satisfied in full by sale of property to plaintiff.

On the judge's docket of October term, 1858, of this cause last named, DeWolf & Daniels' names are entered by the judge as attorneys for defendants. They then (Oct. 13, 1858,) obtained an order to extend the time to plead, and filed an affidavit of merits.

On the 18th of October, 1858, defendants caused to be filed, an affidavit intended as a ground for a motion to set aside the judgment in the first above entitled cause, entered by confession, for \$758.81 and costs, and to let in the defendants to defend upon the merits. Upon this the judge had granted an order, dated August 7, 1858, staying execution until the further order of the court.

This order was subsequently set aside, and the plaintiff allowed to proceed with execution.

The affidavit and order on file, has the name of no attorney endorsed upon it, or attached, but was prepared and filed by L. E. DeWolf, an attorney employed by Watson & Northrop to make said motion, and said motion was made and attended to by him.

On Tuesday March 1, 1859, a motion was made by Messrs. Coventry, Rountree & Vaughan, attorneys for Reissig in above cause, to set aside the sales made on the executions as above recited, and declare the same for naught and that the judgments rendered therein, be ordered to stand wholly undischarged and unsatisfied. Said motion was grounded on two affidavits on file, to which is annexed a notice of the motion, with a certificate at the foot of the notice signed by Harry E. Haydon.

5 and courts has considered and determined repeatedly what is the effect of such a writ and recognizes such process as legal and valid.

6 That the first execution was void as a matter of law and a description of an estate, and for that reason, the sale should be set aside, that the property might be sold.

by court
Dwd. If the first execution was abandoned by issuing a new execution & finding it being a different property, was he not estopped to repudiate his last buy & sale.

Dwd. could he have a second sale before the first was disposed of & even if he could not, can he be heard to object after he has satisfied his estate an other property? was his second execution void as voidable. If voidable at the instance of Dft, & other creditors it seems good by estoppel. This judgment was in exercise of a discretion & no appeal lies -
The other side

Insists, that notice was absolutely necessary that before the sales could have been set aside.

Copy of the motion and certificate above referred to:

CIRCUIT COURT, COOK COUNTY.
CHARLES REISSIG, }
vs. } *Two Cases.*
ALANSON WATSON, *et al.*

DEWOLF, Sir:--

You will please take notice that on the opening of the court, Tuesday the 1st day of March, or as soon thereafter as counsel can be heard, we will move the court upon affidavit, with copies of which you are herewith served, to set aside the sale made in the above cases and declare the same for naught, and that the judgments rendered therein be ordered to stand wholly undischarged and unsatisfied.

Yours, very truly,

COVENTRY, ROUNTREE & VAUGHAN,
Chicago, Feb. 25, '59. *Plaintiff's Attorneys.*

Served by leaving a copy of within, at the office of J. DeWolf, Friday, Feb. 25, 1859.
HARRY E. HAYDON.

Copy of the substance of the affidavits above referred to:

CIRCUIT COURT, COOK COUNTY.
CHARLES REISSIG, }
vs. }
ALANSON WATSON, *et al.*

STATE OF ILLINOIS, }
DU PAGE COUNTY. } James J. Hunt of said DuPage County,
being duly sworn, on oath saith:

That on or about 22d May, 1858, he being then (and the previous year, 1857,) sheriff of said county, received an execution in said cause, directed to the sheriff of Du Page county, which he levied on lots *two* and *three* in *block one*, in W. L. Wheaton's addition to the town of Wheaton in Du Page county, as defendant's property and advertised it for sale—postponed same several times for want of bidders, until 14th of Aug., 1858.

That on or about 7th Aug., 1858, an order was served upon him staying temporarily, further proceedings granted by the judge of the said circuit court. Thereupon said sheriff supposing it an *injunction* issued from said court, immediately returned said execution to the court from which it issued with the levy still endorsed thereon—and stayed further proceedings under his advertisement.

That afterwards, during the month of October, 1858, affiant received an execution issued on a judgment in favor of Savage, Keith & Co., against said defendants, for about seven hundred dollars, with instructions to levy—which he levied upon the same property hereinbefore described and advertised for sale.

That, thereafter affiant received from the attorney for the plaintiff, a *pluries* execution upon the first mentioned judgment, together with another execution issued upon another judgment of said plaintiff against said defendants, at said October term, 1858, for \$278.80 and costs, with instructions to levy said last mentioned execution on defendants' property.

That affiant then levied both last mentioned executions upon the said property of defendants, before described, and upon which the execution of Savage, Keith & Co. had been already levied, and advertised same for sale Dec. 6, 1858, on which last day said property was sold first under Savage, Keith & Co.'s execution, and bid in in the name of plaintiff, for the entire amount of the judgment, and was then re-sold under the executions of said plaintiff, and bid in in the name of plaintiff aforesaid, for the entire amount of several judgments, and certificates of sale were issued thereupon to the several plaintiffs in the executions.

That said property is not worth more than three hundred dollars.

That affiant was under a mistake as to the purport and meaning of said order, staying further proceedings under the first mentioned levy, and supposed it required him to return said first mentioned execution, which he did return as before stated.

Sworn to etc., etc.

JAMES J. HUNT.

February 19, 1859.

CIRCUIT COURT OF COOK COUNTY.

CHARLES REISSIG,	} <i>Two Cases.</i>
<i>vs.</i>	
ALANSON WATSON, <i>et al.</i>	

STATE OF ILLINOIS, }
COUNTY OF COOK. } ss. John M. Rountree of said county, being
duly sworn, says: that he has been acting as attorney for plaintiffs in
the above entitled causes since May 1st, 1858.

That judgment was entered in one of said causes, Sept. 29, 1857, for \$758.81, against defendants, and execution issued thereon on day of rendition of judgment, which was returned unsatisfied, and an *alias* execution issued Feb. 26, 1858, directed to the sheriff of Du Page county,

Illinois, which was levied by said sheriff, on 22d May, 1858, as appears by his endorsement thereon, on lots two and three in block one, in W. L. Wheaton's addition to the town of Wheaton in Du Page county, Ill., and advertised for sale said property, on July 10, 1858—postponed same from time to time until 14th August, 1858.

That on 7th August, 1858, defendants obtained upon affidavit an order from the Judge of said Court, staying the sale aforesaid temporarily—which order was dissolved at the ensuing October Term of said Court.

That affiant immediately thereupon, supposing said Sheriff of Du Page county had preserved the levy so made by him as aforesaid, and continued and postponed the sale until the final determination of said stay of proceedings by said judge, obtained a pluries execution upon said judgment and forwarded to said sheriff, and directed him to [sell said property so levied upon, and bid in same in name of said plaintiff in satisfaction of said execution.

That at said Ooctober Term of said Court, Savage Keith & Co. obtained a judgment for about \$700 against these said defendants, and issued execution thereon to said Sheriff of Du Page county, which execution said Sheriff immediately levied upon the same property and advertised for sale.

That at same October Term affiant obtained for said Charles Reissig another judgment against said defendants for \$278.80 and costs, and execution thereupon immediately issued to said Sheriff of Du Page, with affiant's instructions to levy upon the same property hereinbefore mentioned, which said Sheriff did—and again advertised for sale.

That on 6th December, 1858, said Sheriff of Du Page sold said property under the execution before mentioned, and bid in said property in the name of the several plaintiffs in execution, under each separate execution, in entire satisfaction of the several judgments.

Since said sale affiant has been informed and believes true that immediately on service of the order staying proceedings under the first mentioned judgment, the Sheriff released the levy made under the said alias execution on the judgment of May 22d, 1858, and immediately on the receipt of Savage, Keith & Co.'s execution, levied the same upon the same property, which levy was made before the entry of the order dissolving the order to stay said first execution, and did not inform affiant or said plaintiff of the release of said first levy, or of the receipt of Savage, Keith & Co.'s execution, but wholly kept affiant in ignorance of his neglect to faithfully keep and preserve the original levy, and thereby

affiant was *deceived* as to the true condition of the several executions and the levy so made; and did not inform this affiant, or the said plaintiff or any one in his behalf, of his release of said levy, until after the sale and satisfaction of said executions.

Wherefore, affiant prays, in consequence of the neglect of said Sheriff of his duty in preserving said levy, and in consequence of keeping said plaintiff and affiant in ignorance of the true condition of said levy and sale, until after the sale was made and execution satisfied:

That an order be entered in both causes hereinbefore mentioned, setting aside said sale on said judgments of the plaintiff aforesaid.

That the judgments be permitted to stand wholly unsatisfied and undischarged.

That affiant was wholly ignorant of said Sheriff's releasing said levy; as, had he been informed, he would not have directed the Sheriff to bid in the property in the name of said plaintiff, in satisfaction of said judgments.

That affiant has seen the property and is acquainted with the value of it, and thinks the same cannot be worth more than \$300 at present.

That at the time of the levy there was a mill standing upon the property aforesaid, which has since been burned down and destroyed.

Sworn to 26th Feb., 1859.

JOHN M. ROUNTREE.

The foregoing motion was submitted to the Court March 2d, 1859, by the plaintiff's attorneys, with affidavits aforesaid, with notice of motion attached, and the certificate of said Haydon.

The Court, after consideration, on the 9th day of March, 1859, made the following order, which was entered on the Records of the Court:

MARCH 9, 1859.

CHARLES REISSIG

vs.

ALONZO WATSON &
PETER NORTROP

ASSUMPSIT. *Mo. to set aside
Sheriff's Sale.*

This day again comes the said plaintiff, by Coventry, Rountree & Vaughan, his attorneys, and moves the Court, on affidavits filed, to set aside the sale of property heretofore made on the execution issued out of this Court on the judgment in said cause. And the Court, after hearing

Same returned and filed August 20th, 1858.

That Sheriff was presented with copy of affidavit and stay of proceedings.

That a 2d Execution issued to Sheriff of Du Page, received 13th day of November, 1858, and levied on the 14th of November aforesaid, on the same lots and property mentioned in case of the first Execution.

That on 11th of Dec., 1858, said Sheriff sold said property with the improvements thereon, and same was bid off by the plaintiff in the cause for the amount of debt, interest and costs, \$810.08, and certificate of sale made and filed by said Sheriff in the proper office.

That said last execution was on 20th Dec., 1858, returned and filed in the Clerk's office of this Court, as satisfied in full by sale of real estate to the plaintiff.

That at the time of levy and sale, there was standing upon said Lots levied upon and sold, a flouring mill and planing mill, with full setts of machinery in both, in good repair and doing business. The planing mill was new; the flouring mill was two years old.

The value of the Lots was at least \$600 over and above improvements.

The improvements aforesaid cost defendants nine thousand dollars, and he thinks over that sum.

In said flouring mill were two run of stone, five bolts, and the same was in good repair at the time of sale, and worth the above sum stated as cost.

That after the sale, on evening of 29th Dec., 1858, said mills accidentally took fire and burned up.

That defendant knows nothing of the cause of the fire, or how originated. The mills had been regularly running until 7 o'clock of the same evening, and were then shut up.

The original cost of the engine and boiler was over three thousand dollars.

The planing mill and iron fixtures cost about one thousand more.

After the fire, the machinery was examined by H. Scoville of Chicago, a machinist, and partner of plaintiff Reissig, and by Mr. Ackley, a machinist of Springfield, who after examination expressed it as their opinion that said machinery, including engine and boiler, could be re-

stored and made as good as before the fire for about five hundred dollars, which deponent thinks to have been a fair estimate.

That Ackley aforesaid also expressed his opinion that said machinery alone, after the fire, was worth fifteen hundred dollars without repairs, and exclusive of the Lots.

That there were no other incumbrances on the Lots.

That while the first execution was in Sheriff's hands, these defendants employed L. E. DeWolf, Esq., then of Wheaton, to make a motion to open the judgment in order to let in a defence by way of set-off or recoupment of damages which had accrued or arisen against Reissig, who manufactured said boiler and engine, in consequence of defects in the work, the judgment note and warrant of attorney having been given for purchase price of same, which by agreement were to be of the best quality, whereas in truth and in fact the defendants had to expend over three hundred dollars on the boiler to make it good, before it was useful, or could be used to any advantage.

That about that time Reissig commenced his second suit against same defendants for those same repairs, or part thereof, which was the expenditure defendants designed to bring in as damages, to reduce the amount of the first judgment, the boiler being in fact warranted to them by Reissig, but could not be used by the defendants until so repaired and made good.

That defendants employed said DeWolf to make said motion, and for no other purpose.

He accordingly drew papers and affidavits, and shortly after gave notice to defendants that he was going away somewhere to the west, and could not attend to their business any further.

That DeWolf shortly after left Wheaton, and has never returned to reside; the business was neglected; motion not made as defendants suppose for want of a person to attend to it.

That DeWolf's family remains at Wheaton still, but he has had no office or place of business there, so far as deponent knows.

That about three or four weeks prior to the present time, defendant first learned by information of his co-defendant and partner, A. Watson, which he derived from Reissig, the plaintiff, of the order of this Court of March 9, 1859, setting aside the levy and sale and restoring the judgments.

That he, the deponent, never had any notice or knowledge of any motion to be made to vacate levy and sale and restore judgments as aforesaid, and that the whole proceeding to vacate and restore, &c., has been carried on by said Reissig without apprising deponent or said Watson (so far as he, deponent, knows or believes) thereof.

That deponent knows nothing of any notice thereof having been ever served on said DeWolf, nor does he believe any such notice was so served; and also that said DeWolf never had any capacity or authority as attorney to represent these defendants in any such matter or thing.

That deponent yesterday (June 5, 1859) inquired of said DeWolf and was informed by him that he never saw any papers or notice of said motion to be made 9th March last, and knew nothing of same, though he had heard, he thought, of some papers of that kind being left at the office in Warner's Hall in Chicago, where he formerly kept an office with Mr. Daniels.

That the sale of the property on the two executions of Reissig, and one in favor of Alexander H. Morrison for one of Savage, Keith & Gilman, mentioned in the papers on said motion of March 9th, 1859, were each and every of them sales regularly made in good faith by all the parties, Sheriff as well as plaintiffs and owners of the judgments, and the property sold was at the time of sale worth more than four times the aggregate of all the sums bid for the same on the three several executions.

That it is clearly inferable from the circumstances, that Reissig's motive leading to the motion of March 9, 1859, was the occurrence of the fire which reduced the value of the property purchased partially.

That deponent has caused an examination of the files to be made by his attorney, from whom he learns authentically (as he believes) that the pretended notice of said motion, signed by Coventry, Rountree & Vaughan, as plaintiff's att'ys, dated Feb. 25, '59, and addressed "DeWolf,—Sir:—" is in and of a certain cause entitled in the words following:

"CIRCUIT COURT COOK COUNTY.

"CHARLES REISSIG	}	<i>Two Cases."</i>
<i>vs.</i>		
"ALANSON WATSON et al.		

That there is no proof by affidavit or otherwise of the service of said notice on any body, except an unsworn and unofficial certificate of one Henry E. Haydon, appended thereto, stating that he served it by leaving at the office of J. DeWolf, Tuesday, Feb. 25, 1859.

And the only affidavits, of James J. Hunt (Sheriff) and John Rountree (Att'y), on which said motion appears to have been founded, are in causes entitled at the heading of said affidavits in the same manner exactly as at the heading of said notice,—that is to say, in cases of said Reissig vs. "Alanson Watson et al."

But both the judgments restored to force by said order, in which also the sale for that purpose is vacated, is a judgment entitled and entered in favor of

CHARLES REISSIG	}
vs.	
ALONZO WATSON & PETER NORTHROP,	

And the order to vacate and restore as aforesaid is entitled and entered in the same manner last mentioned.

(Residue immaterial.)

Sworn to, &c., June 6, 1859.

PETER NORTHROP.

Subjoined, under the same title of cause, is the affidavit of Watson, the other defendant, in which he states that he had read the foregoing affidavit of the other defendant, Northrop, and knew the contents, all which he swears to be true so far as relates to his actions in the premises; also that he never knew or had any notice of the motion decided March 9, 1859, and never heard of it until long afterward; and that he knows all the facts stated in Northrop's affidavit to be true.

Sworn to June 6, 1859.

Subjoined, under like title, is also the affidavit of Warren L. Wheaton, of Du Page county, sworn to 31st May, 1859, in which he states that he is well acquainted with Lots No. (2) Two and (3) Three in Block (1) One in Wheaton's addition to the village of Wheaton, upon which Lots Northrop & Watson's flouring mill was situated, and that said Lots above described are worth three hundred dollars each, to the best of his knowledge and belief.

Subjoined, under like entitling, is also the affidavit of John Satcliffe, made in Du Page county and sworn to May 31st, 1859, in which he swears that he is well acquainted with Lots No. (2) Two and (3) Three in Block (1) One in Wheaton's addition to the town plot of the village of Wheaton, and upon said Lots Messrs. Northrop & Watson's steam flouring mill was situated, and that said property was worth December 11th, 1858, nine thousand dollars (\$9000.00), and that the machinery after the fire was worth fifteen hundred dollars (\$1500.00), to the best of his knowledge and belief.

Notice of motion endorsed on the preceding affidavits:

CIRCUIT COURT COOK COUNTY.

CHARLES REISSIG	}
vs.	
ALONZO WATSON &	
PETER NORTHROP.	

Gents :—Take notice that on Monday, June 20th, 1859, at the Court House in Chicago, or as soon thereafter as counsel can be heard, we intend to move the Court for an order to set aside and disannul the order made by this Court in the above entitled cause on the ninth day of March, A. D. 1859, whereby the levy and sale on and of certain real estate in Du Page County, Illinois, on execution issued out of this Court on the judgment heretofore rendered in this Court, in said above cause, was set aside, vacated, and held for naught, and the said judgment was declared to stand wholly unsatisfied and undischarged. Which motion, so to be made, will be grounded on affidavits, of which the within are copies, and also upon all the papers on file in the above cause, including the papers in the original motion on which the order of 9th March, 1859, was predicated, and on all the processes and papers filed heretofore in said cause.

Dated June 15th, 1859.

Yours, &c.,

MATHER, TAFT & KING,
Attorneys for Watson & Northrop.

To Messrs. COVENTRY, ROUNTREE & VAUGHAN,
Att'ys for Charles Reissig.

Copy of admission of service subjoined.

We admit service of copy of affidavits, with notice endorsed thereon,
of which the above notice is a copy. June 15th, 1859.

COVENTRY & ROUNTREE,
Att'ys for Reissig.

The counsel for Watson & Northrop, by a written argument, (the Court *directing and requiring* such to be handed in instead of an oral argument,) insisted on all the errors apparent in the papers, and particularly

That it was not the custom or practice of Courts to grant such relief or make such order as that of March 9th, 1859, on motion.

That the judgment or order of March 9th, 1859, is erroneous, because the defendants had no notice of the motion, the whole proceeding being entirely *ex parte*.

That the papers for the motion of March 9th showed no fraud or imposition practiced by the defendants, or by the sheriff, or by any other persons, on the plaintiff or his attorneys.

That the issuing of the second execution by Reissig's Attorneys was sufficient and conclusive evidence of their knowledge of the return of the first ; as otherwise it would have been irregular.

That if they were even in any ignorance of facts, it was their own fault, and they had none to blame but themselves, as they took no pains to obtain information.

That it was clear as any fact could be, that their motive in wishing to get rid of their purchase was merely because the fire had diminished their chances to make a speculation by the purchase.

That the whole proceeding on motion of March 9th, 1859, was irregular and void, on the ground that all the affidavits or papers for that motion were entitled in the cause of

“CHARLES REISSIG	}	<i>Two Cases.”</i>
vs.		
“ALANSON WATSON, ET AL.		

But the judgment *restored*, and all the executions, and the Court's order of March 9th, 1859, are in quite another cause, entitled,

CHARLES REISSIG	}
vs.	
ALONZO WATSON AND	
PETER NORTROP.	

The counsel for Reissig, Messrs. Coventry & Rountree, also appeared and submitted their arguments in writing.

Affidavits were read also in opposition to defendant's motion to set aside the order of March 9, 1859, to wit:

CIRCUIT COURT COOK COUNTY.

CHARLES REISSIG	}
vs.	
ALONZO WATSON, ET AL.	

Mr. Rountree, plaintiff's Attorney, swears, under date of July 5, 1859, that on examination of the Court Docket of October term, 1858, he finds an entry by the Clerk of this Court, of an extension of time to plead in above cause, from 13th Oct. to the Monday succeeding, together with the name of De Wolf, as Attorney for said defendants, who appeared at that time and obtained from the Court such extension, in which, as such Attorney, he wished to file pleas for said defendants.

At the expiration of which time no pleas having been filed, the default of defendants was entered on Oct. 22d, 1858, and plaintiff's damages assessed by the Court.

That afterwards, affiant filed affidavits of himself and of sheriff of Du Page County, in support of motion to set aside sale on the above judgment under execution, and caused notice of such motion to be served upon said DeWolf, by being left at his office during business hours on afternoon of 25th February, 1859, by Harry E. Haydon, clerk of affiant, as he informed affiant and made affidavit thereof, which notice affiant is informed said DeWolf received.

That affiant had good reason to suppose said DeWolf was the Attorney of said defendants, as he appeared in the cause, and became attorney of record therein.

Another affidavit of Mr. Rountree is also on file, sworn to on the same day with the last, in which he states on oath, that during the summer of 1858, one Lyman E. DeWolf served upon affiant, by leaving at his office in Chicago, an order of Court, in the above cause granted upon affidavit filed, staying further proceedings in said cause until the further order of the Court.

That at Oct. term, 1858, affiant moved said Court to set aside said order staying proceedings, upon affidavit furnished by affiant, which motion was contested by said DeWolf, as attorney for the defendants, and was sustained by the Court.

That upon 25th Feb. 1859, (here is repeated the service of notice by Haydon and his making affidavit thereof, of motion to *vacate* and *restore* ect., percisely as in the last preceding affidavit).

That by Mr. DeWolf's appearance in said cause, in manner aforesaid, affiant supposed him to be the attorney for defendants, his name appearing on the records of this court as such attorney.

The plaintiffs also produced and read, in opposition to defendants' motion to set aside said order of March 9, 1859, an affidavit of Harry E.

Haydon, attached June 15, '59, to his said certificate of service of notice upon said DeWolf, which said affidavit is in the words and figures following, and was subjoined to his said certificate, to wit:

"Subscribed and sworn to before me, June 15, 1859.

Wm. L. CHURCH, *Clerk.*"

And it is agreed by the parties that foregoing affidavits, notices and orders shall be considered, so far as pertinent, as having been made in each of the above entitled causes, and that several orders of the court therein, were had and made in each, and that as fully as if the same had severally entitled therein, it being the intention of the parties, that judgments which may be entered by the supreme court in the premises shall be made and entered in each cause.

The court overruled the motions of the defendants and made the orders following, that is to say:

IN CIRCUIT COURT, June Term, 1859.

CHARLES REISSIG,	} <i>Assumpsit, July 6, 1859,</i>	
<i>vs.</i>		
ALONZO WATSON &		} <i>Motion, &c.</i>
PETER NORTHROP.		

This day again came, as well the said plaintiff, by Coventry & Rountree his attorneys, as the said defendants, by Mather, Taft & King, their attorneys. And the said defendants now move the court to set aside the order of this court heretofore made, setting aside the sale of property, heretofore made by the sheriff of Du Page county, on the execution issued on the judgments in this cause, which motion is resisted by by said plaintiff's counsel, and the court after hearing arguments of counsel on said motion, as well in support thereof as in opposition thereto, and being fully advised in the premises, now orders that said motion be and the same is hereby overruled. The same order was entered in the same words in each of the cases.

To all which the counsel for the defendants *excepted* then and there, for all the errors and irregularities apparent on the face of the papers, as well as on the merits, of which objections are more fully set forth and stated above, and on their prayer the judge hath signed and sealed this bill of exceptions, July 12, 1859.

GEORGE MANIERRE,
Judge of the 7th Judicial Circuit, Ill. (SEAL.)

Copy of stipulation at the foot of the bill of exceptions:

CIRCUIT COURT, COOK COUNTY, ILL.

CHARLES REISSIG,	}	<i>Judgment by confession on note and warrant of attorney, Sept. 29, 1857, for \$758.81, and costs.</i>
<i>vs.</i>		
ALONZO WATSON &		
PETER NORTROP.		

CHARLES REISSIG,	}	<i>Judgment October 22d, 1858, damages assessed \$278.50 and costs.</i>
<i>vs.</i>		
ALONZO WATSON &		
PETER NORTROP.		

It is hereby stipulated between the attorneys for the respective parties in the two above entitled causes, that judgment be rendered in the supreme court in both the above entitled causes, mentioned in the foregoing bill of exceptions, the whole merits in both cases appearing on the papers sent up herewith.

Dated Nov. 16, 1859.

COVENTRY & ROUNTREE,
Attorneys for Reissig.

MATHER, TAFT & KING,
Attorneys for Watson & Northrop.

The following writs of execution with the returns endorsed thereon, with memoranda of receipts thereof by sheriff, and his returns thereto and filing by clerk, are set forth in the record in the above cause.

CHARLES REISSIG,	}	<i>Fieri facias (alias.)</i>
<i>vs.</i>		
ALONZO WATSON &		
PETER NORTROP,		

"We command you as before, the sheriff of Cook county," directed to the sheriff of Du Page County, to levy \$758.81, which Reissig, in vacation after the June special term, recovered on the 29th Sept., 1857, for damages and \$5.70 costs, tested 26 Feb., 1858, returnable in 90 days, endorsed, "Received March 25th, '58, this ex'n.

JAMES J. HUNT, *Sheriff of Du Page."*

May 22d, levied on the following described property, to wit: lots No. two and three in block No. one, in W. L. Wheaton's addition to the town of Wheaton in Du Page Co., certificate filed, advertised for sale, July 10, 1858, at 1 o'clock, P. M. Sale postponed until the 17th. July 17,

sale postponed until Aug. 4th, by order of plaintiff's attorney. Aug. 4, postponed until 14th day of Aug. for want of bidders.

I return this execution, having been presented with a copy of affidavit of defendant, and certificate of judge staying proceedings.

Filed Aug. 20, 1858.

WM. L. CHURCH, *Clerk.*

JAS. J. HUNT,
Sheriff of Du Page.

CHARLES REISSIG,	} <i>Alias fieri facias, to</i>	
<i>vs.</i>		} <i>sheriff of Du Page Co.</i>
ALONZO WATSON & PETER NORTHROP.		

"We command you as before, that" &c. To levy \$758.81 damages recovered in vacation after June special term, at Chicago, on the 29th day of Sept., 1857, and \$14.15 costs, tested 12th November, 1858, returnable in 90 days thereafter, endorsed under same entitling,

"Received this execution this 13th day of Nov. 1858.

JAS. J. HUNT, *Sheriff.*

Nov. 14th, levied on lots No. 1 and 2 in block No. 3, in W. L. Wheaton's addition to the village of Wheaton, Du Page Co., certificate filed. Advertised for sale Dec. 11, at 2 o'clock.

JAS. J. HUNT, *Sheriff.*

The above property sold to Charles Reissig on the 11th day of December, 1858, for the sum of eight hundred and ten dollars and eight cents, and certificate of sale filed for record.

JAS. J. HUNT, *Sheriff of Du Page.*

I return this execution satisfied in full by sale of property to plaintiff.

Dec. 17, 1858.

JAS. J. HUNT, *Sheriff.*

Filed 20th Dec., 1858.

WM. L. CHURCH, *Clerk.*

(Items marked on the back):

CHARLES REISSIG, pl't'ff, *vs.* ALONZO WATSON & PETER NORTHROP, def'ts.

Damage,.....	\$758 81
Plaintiff's costs.....	14 15
Defendants' cost,.....	1 50 \$774 46
Interest from 29 Sept., 1857,.....	9 50
Sheriff,.....	26 12
	\$810 08

CHARLES REISSIG, }
vs. } *Fieri facias di-*
ALANSON WATSON & } *rected to sheriff of*
PETER NORTHROP. } *Du Page Co.*

To levy \$278.50 recovered by plaintiff, at the circuit court on 2d Monday of October, 1858, as damages, and \$8.95 costs. Tested 28th Oct.. 1858. Returnable in 90 days thereafter. Endorsed

“Received this execution Oct. 29th, 1858.

JAS. J. HUNT, *Sheriff of Du Page.*

Nov. 2d, 1858, levied on lots No. 1 and 2 in block No. 3, in W. L. Wheaton’s addition to the village of Wheaton, certificate filed, advertised for sale Nov. 29th, postponed until Dec. 11, at 2 o’clock, P. M.

J. J. HUNT, *Sheriff.*

The above property sold to Charles Reissig, on the 11th day of December, A. D. 1858, for the sum of \$309.72. Certificate filed for record.

J. J. HUNT, *Sheriff.*

Filed 20th Dec., 1858.

WM. L. CHURCH, *Clerk.*

Items endorsed :

Damage,.....	\$278 50
Plaintiff’s costs,.....	8 95
Defendants’ cost,.....	1 35 \$288 80
Interest from Oct. 22d, 1858,.....	2 25
Sheriff,.....	18 67
Dec. 17, 1858.	<u>\$309 72</u>

I return this execution, satisfied in full by sale of property to plaintiff.

JAS. J. HUNT, *Sheriff of Du Page.*

ALEXANDER H. MORRISON, }
FOR USE OF JAS. C. SAVAGE, DODGE }
W. KEITH & MARCUS D. GILMAN, } *Fieri facias, direct-*
ed to sheriff of Du
Page County.
vs.
P. NORTHROP & A. WATSON. }

Direction to levy \$696.32 which Alexander H. Morrison, for use and benefit of James C. Savage, Dodge W. Keith & Marcus D. Gilman, recovered 2d Monday of October, 1858, in Cook circuit court, for damages

against defendants, and \$4.50 costs. Tested 12th Oct., 1858. Returnable in 90 days thereafter. Endorsed

"Received this execution Oct. 13, 1858.

JAS. J. HUNT, *Sheriff of Du Page.*

October 15, 1858, levied on lots No. 1 and 2 in block No. 3, in W. L. Wheaton's addition to the town of Wheaton. Certificate filed. Advertised for sale Nov. 29, at 10 o'clock. Nov. 29, sale postponed until the 11th day of December, 2 o'clock, P. M.

The above described property sold to plaintiffs, Savage, Keith & Co., on the 11th day of December, A. D., 1858, for the sum \$734.62. Certificate filed for record. JAS. J. HUNT, *Sheriff of Du Page.*

Dec. 17, 1858, I return this execution satisfied in full, by sale of property to Savage, Keith & Co., on the 11th day of December, 1858. Certificate filed for record. JAS. J. HUNT, *Sheriff of Du Page.*

Items endorsed:

Damage,.....	\$696 32
Plaintiff's cost,.....	4 50
Defendants' cost,.....	1 50 \$702 32
Interest from 12 Oct., 1858,.....	6 96
Sheriff's fees,.....	25 34

Filed 20th Dec., 1858.

\$734 62

WM. L. CHURCH, *Clerk.*

SUPREME COURT OF ILLINOIS.

ALONZO WATSON &
PETER NORTHROP,

PLAINTIFFS IN ERROR,

vs.

CHARLES REISSIG,

DEFENDANT IN ERROR.

} *Points for P'ffs in Error.*

POINT I.

It is not the *practice* of courts to grant such relief as was asked and granted in the circuit court in this cause, *on motion*. *A bill in chancery* is the proper form of application.

5 Cowen's Rep. 38, *Lansing vs. Quackenboss*.

1 Gilman 435, *Day vs. Graham*.

In this case *relief by motion was denied*, after elaborate argument and reargument, on petition for rehearing, by Mr. Butterfield, of counsel, and the party "*turned over by this court, to remedy in equity, where*" (says Scates J., at p. 444,) "*if a sale is vacated such terms may be imposed as may be equitable.*"

POINT II.

The adjudication of the Circuit Court of March 9, 1859, in the two causes, vacating the sales and restoring the judgments as undischarged and unsatisfied, was erroneous: Because *no notice of such intended motion had been served upon the defendants or their attorney*. *The whole proceeding was entirely ex parte*.

2d Gilman, 281, *Sears vs. Low*.

1 Wendell, R., 89, *Dawn vs. Burt*.

6 Hill's Rep., 14, 17, *Delaplaine vs. Hitchcock*.

"A party is chargeable with *knowledge* of facts down to Judgment, inclusive. But, *otherwise* as to *issuing* execution and proceedings under it:" per Bronson, J., p. 17.

2 Johnson's Cases, 120, *Wardell vs. Eden*.

1 Scammon, 535, *Dezey vs. Orr*.

POINT III.

The papers and affidavits on which Reissig's motion of March 9th, 1859, was grounded, show *no fraud or deception practiced by the Sheriff of Du Page* on the plaintiff's attorney;

On the contrary: The case which the plaintiff's attorney makes out is one of mere negligence *on his own part*, without the least cause for throwing blame upon the Sheriff.

In any event; The Sheriff was by Mr. Rountree, the att'y, constituted his and Reissig's agent and attorney, to bid in the property (or cause it to be done), and the client would therefore be chargeable with all the Sheriff knew.

The issuing of the 2d or pluries execution by Reissig's attorney was conclusive evidence that he knew the return of the first, as otherwise the issuing of the last execution would have been irregular.

It is not shown, that Reissig or his attorney took any pains or exercised any care or diligence with a view to obtain any information from the Sheriff or otherwise: they never asked a question; and surely no obligation rested on the Sheriff to volunteer information.

Mr. Rountree's affidavit does not affirm in any way whatever that *he was ignorant even* of Savage, Keith & Co.'s execution; but *studiously* avoids it. The very absence of such an affirmation at the place in his affidavit where he ought to have inserted it, if true, but manifestly tries to have it taken by implication, is evidence that he *knew all about it*.

It is clear, from all the facts in the case, that Reissig's motive for wishing to repudiate his purchase on execution, was solely because the fire had diminished his chances of making *a large speculation*; though he could still have got his pay, and perhaps more. This motive he carefully *conceals* from the Court, by refusing to state *the time* the fire occurred, without which knowledge its materiality or immateriality could not appear; and instead thereof a false and unfounded reason is assigned as a ground for the motions, to wit: that the Sheriff *deceived* and *misled* them.

But Mr. Reissig has selected his own ground for relief, and cannot now be permitted to change it.

Alleyata and probata must agree:

- 5 *Gilman*, 499, *Mackay vs. Bissett*.
11 *Illinois*, 194, *Morgan vs. Smith*.
Do. do. 361, *White vs. Morrison*.
12 *do.* 26, *per Caton, J.*, "The bill was
not framed with a view to obtain relief on
that ground."

POINT IV.

The affidavits and notice of the motion, and all the papers on which the motions of March 9, 1859, were grounded, are entitled in the case of

CHAS. REISSIG
vs.
ALANSON WATSON
& PETER NORTHROP. }

Whereas the judgments are all, (and the executions all except one,) and both the Judge's orders to vacate the sales and restore the judgments are in another and different cause entirely, i. e.

CHAS. REISSIG
vs.
ALONZO WATSON &
PETER NORTHROP. }

2d Cowen R. 509, *Humphrey v. Cande & Lasher*.

Where Court say, "The objection is fatal. There is no such cause in existence as the one mentioned in the title, and *such an affidavit is never received*. The party cannot be convicted of perjury tho' he swear falsely."

POINT V.

The two executions, *levies and sales* on Reissig's executions, as appearing of record, (and the same is true of Savage, Keith & Co's execution, a copy of which is given,) were upon *Lots 1 & 2 in Block 3* in W. L. Wheaton's addition to Wheaton.

The first execution of Reissig (the alleged release whereof by the sheriff is the injury complained of,) was, *e contra*, not upon the same, but upon *Lots 2 & 3 in Block 1* in W. L. Wheaton's addition to Wheaton.

It will thus be seen that the gravamen of Reissig's complaint against the sheriff, his agent, and for which he asked relief by vacating the sales and restoring the judgments, had no reference or was entirely inapplicable to his second judgment and sale under it. That sale was, by his own showing, in every respect, regular, and could not be bettered.

And as to the first judgment, and sale under it, the gravamen of his complaint is, that the sheriff, by mistake, released the first levy by returning the execution, supposing the order to stay was an injunction, and that by this mistake *he is injured* in this, to wit: that but for that mistake, he would have got an *earlier* title (ahead of Savage, Keith & Co.) to the same property, *lots 1 & 2 block 3*, by virtue of his first levy of first execution on *lots 2 & 3 block 1*.

The impossibility and entire error of this conclusion shows that he sustained, by his own showing, *no damage whatever*.

In matter of fact, too, it is obvious that the sheriff *did not release the levy* by returning the execution with the levy still remaining endorsed upon it, as he says was done. No doubt sheriff mistook his duty in returning execution, but all that was required to protect Reissig in the premises, would have been to ask leave of the Court to take the execution from the files and return it back to the sheriff.

This, however, under the circumstances, he lost nothing by neglecting to do, inasmuch as *the first levy itself* was on wrong property, and was good for nothing.

Mr. Rountree, therefore, *not by any deception*, but VERY PROPERLY, issued his new or pluries execution.

POINT VI.

The record and files of the Circuit Court in these suits, were wrongfully *mutilated and altered* to suit the views of Reissig or his attorney, after the defendants made their motion to vacate the orders of March 9th, 1859, by adding to Harry E. Haydon's certificate of service the official certificate of an oath administered by Wm. L. Church, Clerk of the Circuit Court, on 15th June, 1859.

Even independent of its *untimeliness*, (the Court will see it was done on the identical day on which Messrs. Coventry &

Rountree admit service of notice of this motion,) the affidavit and jurat *amount to nothing*, because the body of the afft. does not state *who* made the service. (It is a mere *scrap*—an unfinished and incomplete sentence, on which no person could be convicted of perjury.

POINT VII.

The motions of defendants to vacate orders of March 9, 1859, were submitted to the Court on both sides on 20th June, 1859 (an oral argument being refused by the Court). *And yet* the Court permits Reissig's attorney to keep on loading down the files with new affidavits, down to July 5th, when the Court announce its decision overruling the motions. And the Court insert these affidavits, which we never saw or could answer in the bill of exceptions.

We *charge and insist* that this is irregular, and that after a cause is once taken by the Court, *sub judice*, the parties are no longer in Court, except to hear judgment.

NOTA BENE.

The Court will notice that by stipulation at the foot of the bill of exceptions, as well as in the body of it, judgment of the Supreme Court is to be entered in the two causes, entitled thus:

CHARLES REISSIG,	}	On Judg't Sept. 29, 1857, for \$758.81
<i>vs.</i>		Damages.
ALONZO WATSON, & PETER NORTHROP.		Sales vacated and Judg't restored, March 9, 1859.

CHARLES REISSIG	}	On judg't of Oct. 22, 1858, damages
<i>vs.</i>		assessed, \$278.50.
THE SAME DEF'TS.		Sale vacated and judgment restored, March 9, 1859.

MATHER, TAFT & KING,
Atty's for Plaintiffs in Error.

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable George Manierre Judge of the Seventh Judicial Circuit of the State of Illinois, and Sole Presiding Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof begun and held at the Court House in the City of Chicago, in said County, on the Second Monday, (being the Eleventh day) of July in the year of our Lord one thousand eight hundred and fifty-nine and of the Independence of the said United States the Eighty-fourth

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

Charles Staran States Attorney.

John Hulpray Sheriff of Cook County.

Attest, Wm S. Church Clerk.

Be it remembered.

That heretofore, to-wit: on the Second day of July in the year aforesaid, there was filed in the Court aforesaid a Bill of Exceptions, which is in the words and figures following to-wit:

In the Circuit Court of Cook County, Illinois.

Charles Riesig

Alonzo Kaban

Peter Northrop

In the above entitled cause a judgment was entered by confession, on a Note accompanied by a warrant of Attorney, to confess judgment in the usual form Authorizing any Attorney of a Court of Record to appear and Confess judgment upon said Note.

The plea of Confession is signed by L. B. Taft attorney for defendant.

A. L. Borentry was Attorney for the plaintiff.

Judgment was entered of Record September 29th 1857. for \$ 758 ⁸¹/₁₀₀ damages besides Costs of suit.

The first Execution (a fieri facias) was issued to the Sheriff of Dupage County tested 26th February A.D. 1858 & was received by the Sheriff March 25th 1858 and levied by him (May 25th 58) on Lots No 1 and 2 and 3 in Block No One in N.E. Wheatons addition to the town of Wheaton in Dupage County.

To the said Execution the said Sheriff returned Aug 20th 1858 that he was furnished with a copy of Affidavit of debt & certificate of Judge stating proceedings - Exn. Returned & Filed Aug 20, 1858.

A second Execution was issued to and received by the said Sheriffs of Dupage County on said judgments on the 13th day of November A.D. 1858 - A.D. 1858, which latter Execution (a fieri facias as before) tested on the 12th Nov 1858, on the fourteenth of the same month in the same year was levied upon Lots No 1 & 2 in Block No 3 in N.E. Wheatons addition to the Village of Wheaton Dupage County & the same were sold thereupon by said Sheriff & bid in by the said Plaintiff in the above cause for \$ 810 ⁸¹/₁₀₀ the whole amount of Debt & Costs & a certificate of sale was duly made and filed by the Sheriff in the proper office. Sale was Dec 11th 1858.

And the said Execution was thereupon on the 20th December 1858 by said Sheriff returned filed in the clerks office of this Court, as satisfied in full by sale of real estate to the Plaintiff.

Another Execution, writ of fieri facias on a second judgment of Charles Reissig against the said Defendants, Alanson Watson and Peter Northrup which was for. \$ 278⁵⁰/₁₀₀ Damages besides Costs. (in a suit commenced and prosecuted in the ordinary way by summons) Entered 22^d October 1858. was received by the Sheriff of DuPage County October 29 1858 & was levied Nov 2^d 1858 on Lots No. 1 & 2 in Block No 5 in N. L. Wheatons addition to the Village of Wheaton, which on the 11th day of December 1858 were sold to Charles Reissig the plaintiff for the amount of Execution & Costs \$ 319.²⁵/₁₀₀ & certificate filed for Record, and Dec 17th 1858 Sheriff returned the same satisfied in full by sale of Property to Plaintiff on the judgment docket of Oct Term. 1858. De Wolf & Daniels was named & entered by the Judge as Attorney for Defs in the latter cause. They then (Oct 13. 1858). obtained an order to extend the time to plead & filed an affidavit of merits.

On the 18th of October 1858. the defendants caused to be filed an affidavit intended as a ground for a motion to set aside the judgment in the first above entitled cause for \$ 278⁵⁰/₁₀₀ & costs so entered by confession against the defendants and to let in the defendants to defend upon the merits. upon which an order staying Execution was granted by the Judge to stand until the further order of the Court. This order bears date Aug 7. 1858 which order was subsequently

set aside & the plaintiff allowed to proceed with Execution

The affidavit and order on file as aforesaid has the name of Mr Attorney Enderup upon or attached to it but was prepared and filed by L E DeWalt an Attorney employed by Watson & Northrup to make said Motion, and the said Motion was made and attended to by him

On Tuesday the first day of March A.D. 1859 a motion was made by Messrs Leonard Pumbree & Vaughan Attorneys for the plaintiff in the above cause to set aside the sale made on the Execution as above recited & declare the same for naught & that the judgment rendered therein be ordered to stand wholly undischarged and unsatisfied.

Said motion was grounded on two affidavits on file to which is annexed a notice of the motion with a certificate subjoined thereto signed by one Henry E Wayden

The Notice aforesaid with heading as well as the certificate of said Wayden & the affidavit aforesaid & their heading on Enlisting, will appear by the following, which are full copies of the same.

Leitch Brown, Clerk County.

Charles Reissig

Alanson Watson Etal

} Dm. Case

DeWalt.

Dr

You will please take notice that on the opening of Court. Tuesday the 1st day of March or as soon thereafter as counsel can be heard we will move the Court upon affidavits with copies of which you are herby served, to set aside the sale made in the above cases and declare the same for naught and that the judgments rendered therein be ordered to stand wholly undischarged and unsatisfied.

Chicago Feb. 25/59 "Yours very truly"
 "Lawrence Rountree Vaughan"
 Jeff Atty

Served by leaving a copy of within at office of
 S. A. Hall. Friday Feb. 25th 1859
 "Mearns & Hayden"

Justice Court of Cook County
 Charles Reissig

Alanson Watson Esq

State of Illinois }
 DuPage County } James J. Hunt of said
 DuPage County being duly sworn, on oath saith
 that heretofore, to-wit: on the 22^d day of May AD
 1858 he was and then had been during the previous
 year of 1857. the Sheriff of said County of DuPage
 that on or about said 22^d day of May. he received

an Execution issued out of said Court in said Cause directed to the Sheriff of said DuPage County which said Execution this affiant levied on. So to know there in Block One in N. E. Wheaton addition to the town of Wheaton in DuPage County Illinois as the property of said defendants, and advertised said property for sale. That said sale was postponed several times for want of bidders until the 14th of August A.D. 1858. That on or about the 7th day of August A.D. 1858 an order was served on this affiant staying temporarily further proceedings under said Execution and advertisement of sale granted by the judge of said Circuit Court. That after the service of said order upon this affiant, this affiant supposing it an injunction issued from said Court, immediately returned said Execution to the Court from whence it ~~was~~ issued, with the said levy still endorsed thereon, and stayed all further proceedings under his said advertisement. That afterwards during the month of October 1858 this affiant received an Execution issued upon a judgment in favor of Savage & Keith & Co. against said defendants for about the sum of Seven hundred dollars with instructions to levy the same upon such property of the said defendants as he might be able to discover they possessed. That he accordingly levied said last mentioned Execution upon the same property heretofore described and advertised the same for sale. That at the receipt of said last mentioned Execution this affiant

received from the Attorney of said plaintiff a pluries Execution issued upon said ~~last~~ mentioned judgment together with an Execution issued upon another judgment obtained by said plaintiff against said defendants at said October Term 1858 for the sum of \$ 378 ⁸¹/₁₀₀ recd with instructions to levy said last mentioned Execution upon the property of said defendants. That this affiant then levied both last mentioned Executions upon the said property of said defendants herein before described & upon which the Execution in favor of Sarag & Keith & Co. had already been levied, and advertised the same for sale December 6th 1858 on which said last mentioned day said property was sold first under the Execution in favor of Sarag & Keith & Co. & bid in, in the name of the plaintiffs in Execution for the entire amount of said judgment and was then resold under the Execution of said plaintiffs and bid in, in the name of the said plaintiff for the entire amount of his said several judgments and certificates of sale were issued thereupon to the several plaintiffs in Execution.

That said property is not worth more than three hundred dollars; That this affiant was under a mistake as to the purport and meaning of said order staying further proceedings under the first mentioned levy and supposed it required him to return said Execution first herein mentioned, which he did return as herein before stated and further hath not

Sworn to & subscribed "Jal J. Hunt"
before me this 19th day
of July 1859
(25) "W. H. body. Notary Public"

Circuit Court of Cook County

Charles Riesig

v

Alanson Watson Etal

} ss. Doro leaves

State of Illinois }
County of Cook } John Mc. Rountree of said County
being duly sworn, says that since the first day of May
A.D. 1858 he has been acting as the Attorney for the
plff. in the above entitled case, That his affiant
is informed and believes by the Records of said County
judgment was entered in one of said Causes September
29th 1857 for the sum of \$ 758.81 against the depts
therein named and Execution issued thereon on the day
of the rendition of said judgment, That sd Execution
was returned unsatisfied and an alias Execution issued
February 26th 1858 directed to the Sheriff of DuPage
County Illinois which said last mentioned Execution
said Sheriff of DuPage County on the 23^d day of
May A.D. 1858 levied as appears by his Endorsement
thereon upon Lots, Doro and One in Block One in
W. L. Wheatons addition to the town of Wheaton in
DuPage County Illinois, and advertised said

property for sale on July 10th 1858 which said sale
 was postponed and continued from time to time until
 the 14th August A.D. 1858. That on the 7th day of
 August A.D. 1858 said defendants obtained upon
 affidavit an order from the judge of said court
 staying said sale temporarily, which said order was
 dissolved at the ensuing October term of said court.
 That this affiant immediately upon such order being
 dissolved by said judge as aforesaid, supposing said
 Sheriff of Wapago County had foreclosed the levy so
 made by him as aforesaid and had continued postponed
 said sale until the final determination of
 said stay of proceedings by said judge, obtained a
 writ of Execution upon said judgment & forwarded
 the same to the said Sheriff of Wapago County and
 directed said Sheriff to sell said property so levied on
 as aforesaid and bid in the same in the name of said
 plaintiff in satisfaction of said Execution. That at
 said October term of said court as this affiant is in-
 formed and believes, Savage Kirk & Co. obtained a
 judgment for about the sum of seven hundred dollars
 against the said defendants and issued Execution
 thereon to said Sheriff of Wapago County which said
 Execution said Sheriff immediately upon the receipt
 thereof levied upon ~~the~~ property hereinbefore described
 and advertised the same for sale.

That also at said October term of said court
 this affiant obtained for said Charles Reissig, another —

judgment against said defendant for the sum of \$ 278⁸⁰/₁₀₀
costs & execution was issued immediately thereupon directed
to said Sheriff with instructions from this affiant to levy
said last mentioned Execution upon the same property herein
before mentioned, which said Sheriff accordingly did, and
again advertised the same for sale; That hereupon, to-wit
on the 6th day of December 1858. said Sheriff of Oupage
County offered ~~for~~ said property for sale under the
Executions heretofore mentioned and bid in said property
in the name of the second plaintiffs in Execution under
Each separate Execution in entire satisfaction of the second
judgment; Since said sale this affiant has been informed
& believes the same to be true that immediately upon
being served with a copy of the order before mentioned
staying proceedings under the first mentioned judgment
said Sheriff released the levy made under said alias
Execution issued upon said first mentioned judgment
made by him May 23^d 1858 and immediately upon
the receipt of the Execution issued upon the said judg-
ment of Savage & Keith & Co. levied said Execution upon
said property which said levy was made before the
order was Entered discharging the order so granted as
aforesaid and did not inform this affiant or sd plain-
tiff of the release of said first mentioned levy, or of
the receipt of said Execution on the judgment of
Savage & Keith & Co. but wholly kept this affiant in igno-
rance of his neglect to faithfully keep & preserve the
original levy made by him as aforesaid, and thereby

this affiant was deceived as to the true condition of the several Executions and the levy so made as aforesaid and did not inform this affiant or the said plaintiff or anyone in his behalf of his release of said levy so made as aforesaid until after said sale satisfaction of said Execution - therefore this affiant prays in consequence of the neglect of duty of said Sheriff in preserving said levy so made by him as aforesaid and in consequence of keeping said plaintiff & this affiant in ignorance of the true condition of said levy & sale until after said sale was made & said Execution satisfied, that an order be entered in both causes heretofore mentioned setting aside said sale upon the Execution issued upon said judgments of the said plaintiffs & that said judgment be permitted to stand wholly unsatisfied and undischarged;

That this affiant was wholly ignorant of said Sheriff's releasing the levy so by him made as aforesaid under the first mentioned Execution, as had he been informed would not have directed said Sheriff to bid in said property in the name of said plaintiff in satisfaction of said judgments;

That this affiant has seen said property and is acquainted with the value thereof, and thinks the same cannot be worth more than three hundred Dollars at present. That at the time of said levy there was a mill standing upon said property, which has since been turned down and destroyed

Subscribed & sworn before me
this 26 day of Feb'y 1859 } John McRambree
Jm Church
clerk

The foregoing motion was submitted to the
court. March 2^d 1859 by the plaintiffs Attorneys
with the affidavits aforesaid with notice of motion attach-
ed & the certificate of said Magdon.

The court after consideration on the 9th
day of March 1859, made the following Order which
was entered on the Records of the court:

Charles Reissig

March 9. 1859

Assumpit

Alonzo Watson &
Peter Northrup

Mo^o to set aside Sheriff's sale

This day again comes the said
Plaintiff by Lawrence Rambree & Vaughan his Attorneys
and moves the court on Affidavits filed, to set aside
the sale of property heretofore made on the Execution
issued out of this court on the judgment in said Cause.
And the court after hearing said affidavits & the
allegations set forth by said plaintiffs & being fully
advised in the premises, now sustains said motion and
orders that the levy and sale of the following described
Real Estate, to-wit: Lots Humbars One and Two, in
N. L. Wheatons addition to the Town of Wheaton in the
County of DuPage & State of Illinois made by the

Sheriff of said DuPage County on an Execution issued out of this Court on the judgments heretofore rendered by this Court in said Cause, &c and the same is hereby set aside vacated and held for naught and said Judgment is hereby declared to stand wholly unsatisfied and undischarged -

On the 20th of June A.D. 1859 -
 Walter Dafferting Attorneys for the defendants
 Nelson & Northrup moved the said Court for an order to set aside & dis annul the order made by this Court in the above entitled cause on the 9th day of March A.D. 1858

The notice to Wrentham, Rumbout and Vaughan of said last motion, filed with said affidavits on which the motion was founded bears on its face an admission of service by defendants Attorneys, in the words and figures following, subjoined to the notice at the foot of same.

We admit service of copy of affidavits with notice endorsed thereon of which the above notice is a copy. June 15th 1859

" Wrentham Rumbout "
 Attorneys for Plurige

The following is a copy of the affidavits on which (besides papers on file & records in the notice referred to) the latter motion was based,

The notice of motion endorsed on the said affidavits, is a copy of the notice filed with the motion bearing at the foot said admission of service on Plurige Attorneys,

Charles Reussig
v
Alonzo Watson
Peter Northrop

In the Circuit Court for Cook County

State of Illinois } ss
Cook County } Peter Northrop of DuPage County
being duly sworn, says, that he is one of the defendants in
the above entitled cause in which judgment was entered by
confession on Note & warrant of Atty. signed by the defen-
dants. The plea of Confession on file being signed by S. B.
Daph. as Attorney for the defendants. Judgment entered
29th Sept. 1857. for \$758 ⁸¹/₁₀₀ damages. The first Ex-
ecution was issued to Sheriff of DuPage County March 2nd
1858 & levied on Lots 2 & 3 Block 1 in W. S. Wheatons ad-
dition to Wheaton May 22^d 1858. So this Execution the
said Sheriff returned Aug 20, 1858 that he was presented
with a copy of Affidavit of defendant & certificate of
Judge staying proceedings.

A second Execution was issued to
& received by the said Sheriff of DuPage County on said
judgment on the 13th day of November AD. 1858. which
latter Execution on the 14th of the same month in the same year
was levied on the same lots of property mentioned in the
first recited Execution & on the Eleventh day of December
1858. the said Sheriff of DuPage County. sold said prop-
erty with all the improvements thereon and the same was
bid in by the said plaintiff in the above cause for the

whole amount of said Execution debt, interest & costs being the sum of Eight hundred & Ten dollars & Eight cents & a certificate of said sale was duly made by said Sheriff & filed in the proper Office and said Execution was thereupon on the 20th Dec 1858 by said Sheriff returned & filed in the clerk's Office of this Court as satisfied in full by sale of property to the plaintiff:

At the time of the levy & sale aforesaid, there was standing upon said Lots, levied on & sold a. aforesaid a ~~flouring~~ mill & planing Mill with full sets of machinery in both in good repair and doing business. The Planing Mill had been put up recently the same fall of 1858. The flouring Mill had been built about two years. The value of the two lots was at least Six hundred dollars independent of improvements. The improvements which were part & parcel of the realty, cost the defendants nine thousand Dollars & deponent thinks over that sum. There were in the flouring mill, two run of stone five bolts. & said property was in good condition & repair at the sale & was worth what it cost to these defendants; After said sale in the month of December 1858 & as near as deponent can state on the evening of the twenty ninth day of said month said Mills accidentally took fire and burned up. This deponent knows nothing as to the cause of the fire or how it originated. The Mills had been running regularly until about seven O'clock in the same evening when they were shut up; The original cost of the Engine & Boiler was over three thousand Dollars;

The planing machine and fixtures of Iron
Cast about one thousand more; After the fire the mach-
inery was Examined by Dr. Scoville of Chicago, a machinist and
partner of the plaintiff Charles Reissig & also by a machinist
now residing at Springfield named Oakley. These Gentle-
men on Examination made. Expressed their opinion that the
Machinery aforesaid including Engine & Boiler could be re-
- stored and made good after the fire & made as good as
before for about five hundred dollars, which opinion this
deponent thinks a fair Estimate thereon; The said Oakley
also Expressed as his opinion that the Machinery alone was
worth enough after the fire to pay the sum of Fifteen
hundred dollars the amount for which the property had
been sold on Reissig's judgment & that of Savage with the
Estimating the same as it ^{then} was after the fire & without repair
& cost including the two lots; There was no other incumbran-
ces on said two lots sold on said Execution Except the
two judgments above referred to; Deponent further
says that while the first Execution above specified was
in the Sheriff's hands, defendants employed S. D. & M. J.
Eg. then of Wheaton to make a motion to open the judgment
in order to let in a defense by way of set off or recoupment of
damages which had accrued or arisen against said Reissig
the manufacturer of the aforesaid Boiler & Engine in consequence
of certain defects in the manufacture of said Boiler, the said
judgment note & warrant of Attorney having been given for
the purchase price of the article which were by the agreement
to be of the best quality, Whereas in truth of fact the defendant

had to expend over three hundred dollars on the Boiler to make it good before it was useful to them or could be used to any good advantage; Dependant further says that about the same time said Reissig commenced a second suit against these defendants for the same repairs or a part of them which these defendants intended to bring in as damages against the first judgment, & thereon recovered his second judgment against these defendants for repairing or remedying the defects in the Boiler warranted to the defendants which they could not use to any advantage as aforesaid until so repaired, Dependant further says that these defendants employed said DeWalt to make said Motion & for no other purpose, & accordingly drew up papers & affidavits & shortly after gave notice to defendants that he was going away somewhere to the West & could not attend to the business of the defendants any further; said DeWalt shortly after left Wheaton & has never returned to reside; the business on which he was so employed by these defendants was neglected & the Motion was not made as defendants supposed for want of any person to attend to it. said DeWalt's family still remain at Wheaton but he has never had any office or place of business there so far as dependant has knowledge.

Dependant further says, that about three or four weeks since he first learned by information ~~obtained~~ derived by his partner A. Walton from the plaintiff Reissig of the order made by this Court on or about March 9th 1859 setting aside the levy and sale of property on Execution as aforesaid of December 11th 1858, & ordering

the judgment on which said sale took place to stand wholly unsatisfied & undischarged. Deponent further says that he never had any notice of knowledge of any motion to be made in this Court to vacate said sale or to set aside said judgment & the whole proceeding to effect said purpose has been carried on by the plaintiff without apprizing this defendant or said Nelson. (So far as he knows & believes) thereof; This deponent knows nothing of said DeWalt having been served with any notice of such proceedings & does not believe he ever was served with such notice & deponent also says he had no authority or capacity as Attorney to represent the defendants in any such matter or thing; This deponent further says he yesterday Enquired of said DeWalt & was informed by him that he never saw any papers or notice of said motion made in this Court on 9th March last & knew nothing of the same tho he had heard he thought of some papers of that kind being left at the Office in Warren Hall in Chicago where he formerly kept an office with Mer Daniels; Deponent further says that the sales of said property on the two Executions in favor of Reising as well as the sale at the same time on Execution & judgment in favor of Alexander H Morrison for use of Sarah Ruth Solomon mentioned in the papers in said Motion of March 9th 1859 were each & every of them, sales & conveyances made in good faith by all the parties, Sheriff as well as plaintiffs or owners of the judgments and the property so sold was at the time of the sale worth more

than four times the aggregate of all the sums bid for the same on the three several Executions, and it is very clear to every person knowing the ~~the~~ circumstances that the leading motive acting on the mind of said Rissig in making said motion of March 9th 1859 was the fact that the occurrence of the fire after the purchase rendered the obtaining of his pay from the property more difficult than before in consequence of a partial diminution of the value of the property so sold.

This deponent further says that that he has caused to be Examined the files of this Court in the above cause & on the Motion of March 9, 1859 & by the report of his Attorney, which he believes correct he further says that the pretended notice of said Motion signed by Coramby Rumbra Vaughan as Jeffs Atty dated Feb 25 / 59 & addressed "De Wolf, Sr." is in & of a certain cause entitled in the words following—

"Lancaster Court, Cook County—"

"Charles Rissig

"Alanson Watson

"Et al

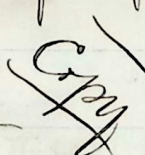
} Dr. Cases

There is no proof by affidavit or otherwise of the service of said notice on any body except an unsworn and unofficial certificate of Henry E. Hayden appended thereto stating that he served it by leaving at the Office of J. De Wolf. Tuesday Feb. 25, 1859.

And the only Affidavits of James J. Hunt and
of John Rountree on which said Motion appears to have
been founded are in Cases entitled at the heading of
said Affidavits in the same manner Exactly as at the
heading of said Above notice, that is to say in Cases of
said Russig vs "Alanson Watson & Co". But both
the Judgment restored to force by said order in which
also the sale for that purpose vacated is a judgment
Entitled & Entered in favor of Charles Russig

vs
Alanson Watson &
Peter Northrop

And the order to vacate and restore as aforesaid is Entitled
& Entered in the same manner last mentioned;

This defendant further
says that a writ of Capias ad Satisfaciendum in said
Cause of Charles Russig against the defendants may
issued on the 10th day of May Instant directed to the
Sheriff of Cook County, and on looking at the Execution
by fieri facias returned unsatisfied next proceeding
said Capias ad Satisfaciendum & on which return is
based the affidavit of Charles Russig setting forth a
refusal to surrender if properly, it is found to be a writ
of fi fa directed to the Sheriff of ^{Cook} ~~Cook~~ County but
returned unsatisfied by Sheriff John Spray of Cook
County and by him only, & further saith not
Subscribed & sworn to (Signed)
June 6 1859 before me  Peter Northrop
Jm Church clre

11
In the Circuit Court of Cook County
Charles Reissig } Illinois

Alonzo Watson &
Peter Northrop }

Cook County ss, Alonzo Watson of the City
of Chicago, being duly sworn says that he is one of the
defendants in the above cause and that he has read
the foregoing affidavit of another defendant & knows
the contents thereof & that the facts therein stated are
true so far as relates to the action of this defendant
in all the premises therein stated & further that this
defendant was never in any manner served with any
notice & had no knowledge whatever of the motion
made on 9th March 1859 in the above cause as
stated in said affidavit & never heard of the same
except as stated in said affidavit long after
the said 9th March 1859. This defendant also
has knowledge of all the other facts stated in said
affidavit & the same are true as thus stated & further
saith not

Subscribed & sworn to } J. S. Alonzo Watson
June 6 1859 before me }

Wm S Church clk
Cook County Circuit Court
D. Page County ss &
Charles Reissig }

Alonzo Watson & Peter Northrop }

Personally appeared before me this day
Warren L. Wheaton of said County of DuPage
after being duly sworn deposes & saith that he is well
acquainted with the lots No (2) & (3) & (4) in
Block (1) in Wheatons addition to the Village of Wheaton
upon which Lots Northrop & Watsons Steam Flaming Mill was
situated and that said lots above described are worth
Three hundred dollars Each to the best of my knowledge
& belief

Copy

Warren L. Wheaton

Subscribed & sworn to before me

this 31st day of May A.D. 1859

"John J. Roberts, J. P."

Charles Reirig

Deeds County Circuit Court

Almz. Watson &

Peter Northrop

Wheaton, DuPage County ss

Personally appeared before me this day John Butcliffe
and after being duly sworn deposes & saith that he is
well acquainted with Lots No (2) & (3) & (4) in
Block (1) in Wheatons addition to the Town plat of
the Village of Wheaton & upon said lots Messrs
Northrop & Watsons Steam Flaming Mill was situated
& that said property was worth December the 11th 1858
nine thousand dollars (\$9,000.00) and that the Machinery
after the fire was worth fifteen hundred dollars \$1,500.00
Each to the best of my knowledge & belief. (Signed
John Butcliffe

12
Subscribed & sworn to
before me this 31.st day } (Copy)
of May A.D. 1859
John Roberts Jr. Justice of the Peace

Ofents take notice, that on Monday
June 20th 1859 at the Court House in Chicago or as soon
thereafter as Counsel can be heard or intend to move the
Court for an order to set aside & discharge the order made
by this Court in the above entitled cause on the 11th
day of March A.D. 1859 whereby the levy & sale on
certain Real Estate in DuPage County - Illinois, on an
Execution issued out of this Court on the judgment
heretofore rendered in this Court in said above cause
was set aside vacated and held for naught & the
said judgment was declared to stand wholly unsatis-
fied & undischarged, which motion is to be made
will be grounded on affidavits of which the within are
copies & also upon all the papers on file in the above
cause including the papers in the original motion on
which the order of 9th March 1859 was predicated
& on all the process & papers filed heretofore in said
cause. Dated June 15th 1859.

Yours &c Meathu Sapt of Yng
Atty for Watson & Northrop
D. Messrs Levanthry, Rumbree & Vaughan
Atty for Chas. Reisinger
at the foot of which appear on the original notice in file

The following admission

. We admit service of copy of affidavits with notice endorsed thereon of which the above notice is a copy. June 10th 1859

Wendell C. Lambie
Atty for Plaintiff

The Counsel for the said Matson & Northrop by a written argument (the Court directing & requiring such to be handed in instead of an oral argument) insisted on all the errors apparent in the papers and particularly, that it was not the custom or practice of Courts to grant such relief or make such orders as that of March 9th 1859. On motion That the judgment or order of March 9th 1859 is erroneous because the Defendants had no notice of the Motion, the whole proceeding being entirely ex parte.

That the papers for the motion of March 9th showed no fraud or imposition practiced by the Defendants or by the Sheriff or by any other person on the plaintiff or his attorney.

That the issuing of the second Execution by Reissig attorney was sufficient & conclusive evidence of their knowledge of the return of the first as otherwise it would have been irregular.

That if they were even in any ignorance of facts it was their own fault & they had gone to blame but themselves as they took no pains to obtain information. That it was clear as a fact could be that their motive in wishing to get rid of the purchase was merely because the price had diminished their chance to make a speculation by the purchase.

That the whole proceeding on Motion of March 9th 1859 was irregular & void on the grounds, that all the affidavits or papers for that Motion were entitled in the Cause of

Charles Reissig }
 or } Two Cases
 Alanson Watson et al }

That the judgment restored & all
 the Executions & the Courts order of 9th March 1859 are
 in quite another cause, entitled,

Charles Reissig }
 or }
 Alongo Watson & }
 Peter Northrop }

The Counsel for Reissig Messrs
 Carventry and Countree also appeared and submitted to
 the Court their argument in writing.

The following affidavits
 were also read in opposition to Defendants motion to set
 aside the order of March 9, 1859, to wit:

Circuit Court of Cook County
 Charles Reissig }
 or }
 Alongo Watson et al }

State of Illinois }
 Cook County } ss

John M. Countree
 of said County being duly sworn says that he has examined
 the Docket of said Court for the October Term A.D. 1859
 and find thereupon an entry by the Clerk of this Court of an
 extension of time to plead in the above entitled cause from

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October 13th to the Monday succeeding together with
the name of De Wolf as Attorney for said Defendants
who appeared at that time and obtained from this
Court such extension of time in which as such Attorney
he wished to file pleas for said Defendants.

That at the expiration of such time no pleas having been
filed the default of said Defendants was entered, to wit
Oct-23^d 1858 and the Plaintiff damages assessed by
the Court.

That afterwards this affiant filed in the Court his
affidavit and the affidavit of the Sheriff of DuPage
County in support of this affiant's motion to set aside the
sale made under an Execution issued upon the judgment
rendered in this Cause and caused to be served upon
said De Wolf by Morris E. Nayden Clerk of this affiant
notice of such motion which said notice was left at the
Office of said De Wolf during business hours on the afternoon
of the 25th day of February 1859 as said Nayden has
informed this affiant & made affidavit thereof, which
said notice this affiant is informed said De Wolf
received. That this affiant had good reason to
suppose said De Wolf was the Attorney of said Defendants
as he appeared in said Cause and became the attorney
of record therein

Subscribed & sworn to before me

5th July 1859

Wm L Church Clerk

John M Countree

Filed July 5, 1859

Circuit Court Cook County

Charles Rissig }

vs
Mingo Watson et al }

State of Illinois }
County of Cook } 3²¹

John M. Countrie

of said County being duly sworn says that heretofore, to wit during the Summer of 1858 one Lyman E. De Wolf served upon this affiant as attorney for said Plaintiff by leaving same at his office in the City of Chicago an order of the Court in the above named case granted upon an affidavit filed therein staying further proceedings in said cause until the further order of the Court therein.

That afterwards, to wit: at the October Term 1858 of this Honorable Court this affiant moved said Court to set aside the order staying proceedings in said cause upon affidavit furnished the Court by this affiant, which motion was contested by said De Wolf as attorney for said Defendants, but was sustained by the Court.

Afterwards, to wit: on the 25th day of February A.D. 1859 this affiant caused to be served upon the said De Wolf as attorney for said Defendants a notice of the application to this Honorable Court to set aside the sale made by the Sheriff of Du Page County under the execution issued upon said judgment, which said notice was served upon said De Wolf by Warren E. Hayden Clerk of this

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affiant as said Haydon has informed this affiant and
also made affidavit thereof by leaving said notice at
his said De Wolf's office on Randolph Street in the City
of Chicago during the business hours of the afternoon of
said day.

That by Elv De Wolf's appearance in said cause
in the manner aforesaid this affiant supposed him to be the
attorney for said Defendants, said De Wolf's name appearing
upon the Records of this Court as such Attorney.

Subscribed & Sworn to before me

this 5th July 1859

Wm L Church Clerk

} John McCountrie

The Plaintiffs also in opposition to Defendants Motion
to set aside said order of March 9th 1859 produced
and read an affidavit of said Harry E Haydon
attached June 15. 59 to his said Certificate of service of
notice upon said De Wolf, which said affidavit is in the
words & figures following and was subjoined to his said
Certificate, to wit:

Subscribed and sworn to before me June 15. 1859

Wm L Church Clerk

And it is agreed by the Parties that the foregoing
affidavits, notices and orders shall be considered so far
as pertinent as having been made in each of the above entitled
causes, and that the several orders of the Court therein were
had and made in each, and that as fully as if the same had
been severally entitled therein. It being the intention of

the parties that judgment which may be entered by the Supreme Court in the premises, shall be made and entered in each case.

The Court having taken the cases under advisement overruled the motions of Defendants and made the orders following (that is to say)

In Circuit Court

of June Term 1859 July 6th 1859

Charles Reising

10.4.18

10

Alonzo Watson

and Peter Northrup

Accomplice

Motion re

This day again came as well the said Plaintiff by Coventry and Countree his Attorneys, as the said Defendants by Nathan East and King their Attorneys and the said Defendants now move the Court to set aside the order of this Court heretofore made setting aside the sale of property heretofore made by the Sheriff of DuPage County on the Execution issued on the Judgment in this cause. Which motion is resisted by said Plaintiff Counsel, and the Court after hearing arguments of Counsel on said Motion as well as support thereof as in opposition thereto and being fully advised in the premises, now orders that said Motion be and the same hereby is overruled.

The same order in the same words was entered in each of the Causes. To all which the Counsel for the Defendants did then & there except for all the errors & irregularities apparent on the

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face of the paper as well as on the merits which objections on the part of the Defendants are more fully set forth & stated above.

And because none of the objections & exceptions offered and made to the opinions & decisions of the said Circuit Judge do appear upon the record of the said Cause & of the motions made & adjudications thereon Therefore on the prayer of the said Defendants by their Counsel aforesaid the said Circuit Judge hath to this Bill of exceptions set his hand & seal according to the Statute in such case made & provided this 19th day of July A.D. 1859

George Manierre (seal)
Judge of 7th Judicial Circuit Ill.

Circuit Court Cook County Illinois

Charles Ruesing }
vs } Judgment by Confession on Note & Warrant of
Alonso Watson & } Atty. Sept 29. 1857
Peter Northrup } for \$758 ⁵⁰/₁₀₀ & Costs

Charles Ruesing }
vs } Judgment October 22^d 1858
Alonso Watson & } Damages assessed \$278 ⁵⁰/₁₀₀
Peter Northrup } & Costs

It is hereby stipulated between the Attorneys for the respective parties in the two above entitled causes that Judgment be

rendered in the Supreme Court in both the above entitled
causes mentioned in the ^{foregoing} Bill of Exceptions the whole more
in both cases appearing on the paper sent up herewith
Dated Nov 16. 1854

Lawrence & Rountree

Atty for Reising

Mathew Taft & King

Atty for Watson & Smithrope

This

And afterwards to wit: on the 26th day of February AD 1858 there was issued out of the Office of the Clerk of the Court aforesaid & under the Seal thereof & directed to the Sheriff of DuPage County to execute the peoples certain writ of Fieri Facias which is in the words & figures following to wit:

State of Illinois }
County of Cook } The People of the
State of Illinois to the

Sheriff of DuPage County, Greeting;
We Command You, as before the Sheriff of Cook County that of the lands and tenements, goods and Chattels of Alonzo Watson and Peter Northrop Defendants in your County, you cause to be made the sum of Seven Hundred and fifty eight Dollars and Eighty one cents, which Charles Riesig Plaintiff lately in the Circuit Court of Cook County in vacation after the June Special Term thereof to wit: at Chicago in said County on the 29th day of September AD 1857 recovered against the said Defendants, and which, by the said Court, were adjudged to the said Plaintiff for damages which he had sustained by occasion of the non performance of certain promises, then lately

made by the said Defendants to the said Plaintiff, And also the further sum of Five Dollars and Security costs, which were adjudged to the said Plaintiff for damages, costs and charges in that behalf expended, whereof the said Defendants are convicted, as appears to us of record. And have you these moneys ready to render to the said Plaintiff for his damages and costs aforesaid, and make return of this writ with an endorsement thereon in what manner you shall have executed the same in ninety days from the date hereof.

Witness William L Church Clerk
of our said Court and the seal thereof
at Chicago in said County this 26th day
of February AD 1838
(L) Wm L Church Clerk

And afterwards to wit, on the 20th day
of August AD 1838 said writ was
returned into the Court aforesaid by the
Sheriff aforesaid endorsed as follows to wit:
"May 22^d Levied on the following
described property to wit: Lots No Two &
Three in Block No One in St L Theater
Addition to the Town of Wheaton in

Dupage Co, Court filed, advertised for
 sale July 10th 1838 at 10 clock P.M.
 Sale postponed until the 17th July 17th
 postponed until Aug 4th by order of Plffs
 Attorney, Aug 4th postponed until the 14th
 day of Aug. for want of bidders

Mar 23rd/38 Recd the Exⁿ
 Jas J Hunt Sheriff of Dupage
 I return this Exⁿ having been presented
 with a copy of Affidavit of Debt &
 Certificate of Judge, staying proceedings
 Jas J Hunt Sheriff
 Dupage

Fees on Exⁿ & New Bail

24 Services	2 00
20 miles on each	2 00
Levy	1 00
Advertising	1 50
3 Postponements	75
Return	20
	\$ 7.25

J J H Sheriff

And afterwards to wit; on the 28th
 day of October A.D 1838 there was
 issued out of the Office of the Clerk of
 the Court aforesaid & under the seal
 thereof & directed to the Sheriff of Dupage

County to execute the Peoples certain
Writ of ^{alias} Fieri Facias which is in the
words & figures following to wit;

State of Illinois } The People of the State
County of Cook } of Illinois to the Sheriff of
DuPage County Greeting;

We Command Yo, that of the Lands
and tenements Goods and Chattels of ~~Alanson~~
Matson and Peter Northrup Defendants in
your County you cause to be made the sum
of Two Hundred and Seventy eight Dollars
and fifty cents which Charles Reurig
Plaintiff lately in the Circuit Court of Cook
County, at a term thereof begun and held
at Chicago, in said County on the Second
Monday of October Instant recovered against
the said Alanson Matson & Peter Northrup
Defendants for his Damages, And also
the further sum of Eight dollars and ninety
five cents which adjudged to the said Plain-
tiff for his Costs and Charges in that behalf
expended, whereof the said Defendants are
convicted as appears to us of Record;
And have you these moneys ready to render
to the said Plaintiff for his Damages
and Costs aforesaid, and make return of
this Writ with an endorsement thereon in

what manner you shall have executed
the same in thirty days from the date
hereof

Saml. Stetson William L Church Clerk
of said Court and the seal thereof
at Chicago in said County this Twenty
Eighth day of October A.D. 1858
Wm L Church Clerk

And afterwards to wit on the 20th day
of December in the year aforesaid, said
writ was returned into the Court aforesaid
by the Sheriff aforesaid, Endorsed
as follows to wit:

" Nov 2^d 1858 Levied on Lots
No 1 & 2 in Block No 3 in W L
Theatrons Addition to the Village of
Theatrons Certificate filed advertised for
sale Nov 29th postponed until

Dec 11th at 2 o'clock P.M. J J Hunt Shff

The above described property sold to
Charles Reising on the 11th day of Decem
ber A.D. 1858 for the sum of \$309.72.
Certificate filed for record

" Received this Ex on Oct 29th 1858 J J Hunt Shff
Jas J Hunt Shff
Deputy

" Dec 17th 1858, I return this Exec
satisfied in full by val of property to
Plff

Jas J Wm Shiff
of Onpage

And afterwards to-wit on the 12th day
of November AD 1858, there was issued
out of the Office of the Clerk of the Court
aforesaid and under the Seal thereof, the
Peoples certain ^{plurial} writ of *Quia Tuncias*
& directed to the Sheriff of Onpage
County to execute, which writ is in
the words & figures following to-wit:
State of Illinois }
County of Cook } The People of the State
of Illinois to the Sheriff of Onpage
County Greeting:

It is Commanded You, as before that
of the lands and tenements, Goods and Chattels
of Alonzo Watson and Peter Northrup
Defendants in your County you cause to be
made the sum of Seven Hundred and fifty
eight Dollars and Eighty one cents, which
Charles Reirig Plaintiff lately in the
Circuit Court of Cook County, in vacation
after the June Special Term thereof to-wit

at Chicago in said County, on the 27th day of September AD 1838 recovered against the said Defendants and which by the said Court, were adjudged to the said Plaintiff for damages which he had sustained by occasion of the nonperformance of certain promises then lately made by the said Defendants to the said Plaintiff, And all the further sum of fourteen dollars and fifty cents, which were adjudged to the said Plaintiff for damages, costs and charges in that behalf expended, whereof the said Defendants are convicted, as appears to us of Record, And have you there money ready to render to the said Plaintiff for his damages and costs aforesaid and make return of this writ with an endorsement thereon in what manner ~~not~~ you shall have executed the same in thirty days from the date hereof

Witness William S Church Clerk of our said Court and the seal thereof at Chicago in said County this Twelfth day of November AD 1838

(Seal)

Wm S Church Clerk

And afterwards to wit on the 20th day of December AD 1838 said writ was

returned into the Court aforesaid, by
the Sheriff aforesaid Endorsed as follows
to wit:

"No 14th Levied on Lots
No 142 in Block No 3 in W L
Pheaton's Addition to the Village of
Wheaton Dupage Co

Cert filed advertised for sale Dec 11th at 2 o'clock

Jas J Hunt Shff
The above property sold to Charles Reimig
on the 11th day of December 1858 for
the sum of Eight Hundred and ten & 100
Dollars and Certificate of sale filed for
record

Jas J Hunt Shff of
Dupage

Recd this Ex on this 13th day of Nov
1858

Jas J Hunt Shff
I return this Ex on satisfied in full
by sale of property to the Shff
Dec 17th 1858

Jas J Hunt Shff

The following is a copy of the
Execution referred to in the affidavit
of John M Romtree of 26th Feb
mary 1859

State of Illinois }
County of Cook }

The People of the
State of Illinois to the Sheriff of DuPage
County, Greeting;

We Command You, that of the lands
and tenements Goods and Chattels of
P Northrup & A Watson Defendants
in your County, you Cause to be made
the sum of Six Hundred and Ninety
six Dollars and thirty two cents, which
Alexander M Morrison for the use and
benefit of James C Savage, & Dodge
St Keith & Marcus & Gilman Plaintiff
lately in the Circuit Court of Cook
County, at a term thereof begun and
held at Chicago in said County on
the Second Monday of October Instant
last past, recovered against the said
P Northrup & A Watson Defendants
for his Damages And also, the further
sum of four Dollars and fifty cents
which were adjudged to the said Plain-
tiff for his costs and charges in that
behalf expended, whereof the said
Defendants are convicted, as appears
to us of Records; And have you these
moneys ready to render to the said

Plaintiffs for his Damages and costs
aforesaid, and make return of this writ
with an Endorsement hereon in what
manner you shall have executed the
same in sixty days from the date
hereof

Witness William L Church
Clerk of our said Court and the seal
thereof at Chicago in said County
this Twenty day of October A.D.
1858

ES

Wm L Church Clerk

And afterwards to wit; on the 20th
day of December A.D. 1858 said writ
was returned into the Court aforesaid
by the Sheriff aforesaid and endorsed
as follows to wit:

October 15th 1858 Levied on Lots
No 182 in Block No 3 in W L Wheaton
Addition to the town of Wheaton.

Cert. filed advertised for sale Novr
29th at 10 o'clock Novr 29th Sale
postponed until the 11th day of
December at 2 o'clock P.M.

The above described property sold to
Plff Savage Keith & Co on the Eleventh
day of December A.D. 1858 for the sum

of \$734.00, Certificate filed for
record

D I 11 1859

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 a Bill of Exceptions, ^{with certain amendments thereto} filed
in two certain causes lately pending in said Court on the
Common Law side thereof, wherein Charles Reissig
was Plaintiff and

Abner Watson & N. Northrup were defendants

IN WITNESS WHEREOF, I have hereunto set my hand, and affixed the seal of our
said Court at Chicago, this 22^d day of November A. D. 1859

Wm L. Church
Clerk.

I am a supervisor of your bond
fifteen hundred dollars
Surety.

Dec 19th 1859

Alwyn Watson
et al vs

Charles Reising

Francis J. J.

Filed April 6. 1860
L. Leland
Clerk

Monzo Watson &
Peter Northrup
plffs in error

vs

Charles Reissig
Def in error

In the Supreme Court
of Illinois

In Error
3^d Grand Division

of April Term 1860

Afterwards to wit on Tuesday the
seventeenth day of April being the first
Tuesday after the third Monday of April
aforesaid, in this same term before the
Justices of the Supreme Court of Judicature
of the people of the State of Illinois at the
Supreme Court Buildings, at Ottawa
in & for said third Grand Division came
the said Monzo Watson & Peter North-
rup by Nathan Taft & King their at-
torneys and say that in the record
and proceedings aforesaid and in the
order & adjudication of the said Cir-
cuit Court made & entered on the 6th
day of July 1859 whereby the motion
made by the said defendants in error
to vacate & set aside the previous order
of said Court in the same cause enter-
ed March 9th 1859th was erroneous and
unjust & ought to have been wholly
vacated, set aside & disannulled

It was concluded there is manifest error in this
to wit that the said order of March 9th 1859

whereas by the ^{over}ruling of said motion
the said order & adjudication of the Court
dated March 9th 1859 was left to stand
in full force & effect;

There is also error in this to wit
That it was made to appear that the
whole proceeding on & prior to the said
motion of March 9th 1859 was entire ly
ex parte no notice of motion ever having
been served on the defendants Watson &
Northrop or their attorney: That the papers
& affidavits on which said last motion
was grounded were entitled in an en-
tirely different cause that is to say in
the cause of Charles Reissig vs Hanson
Watson and Peter Northrop and showed
& contained no insinuations or good
grounds for said motion and therefore
the said defendants in error say that
their said motion submitted June 20th
1859 & decided July 6th 1859 ought to
have been granted by the said Circuit
Court & not to have been overruled.

There is also error in this to wit
That it appears by the record and
proceedings aforesaid that the or-
iginal Judgment of Charles Reissig
vs Hanson Watson & Peter Northrop

for \$758⁵¹/₁₀₀ damages besides costs entered
ed 29th Sep. 1857 was satisfied in full by
a sale of lots 1 & 2 Block 3 in W. L. Wheaton
addition to the town of Wheaton Du Page
County Illinois & said execution so re-
turned & filed which sale was in all
respects regular & fair and no ground
existed for vacating the same & said Cir-
cuit Court proceeded to vacate the same
& to restore the judgment as undischar-
ged & unsatisfied without ever causing the
proper parties in interest to be summoned
or notified, or to come before the Court
in so doing acted without having ^{acquired} any
jurisdiction over the parties in interest
affected by their action in the premises
or of the subject matter so disposed of by
reason whereof the said motion so sub-
mitted June 20th 1859 & decided July
6^c 1859 ought to have been granted in-
stead of being overruled and the said mo-
tions & orders of March 9^c 1859 ought to have
been vacated, set aside & disannulled
& the said judgment instead of being
restored as undischarged & unsatisfied
ought to have been declared to be & to re-
main satisfied in full on the record
in accordance with Execution so returned

There is also error in this to wit:
That it appears by the record & proceedings aforesaid that the execution of said Charles Reissig so first levied as aforesaid was levied upon lots 2 & 3 in Block 1. in W. L. Wheatons addition to the town of Wheaton DuPage County Illinois and the loss & damage pretended to have been sustained by said Reissig in respect to the sale actually made on his subsequent execution of lots 1 & 2 in Block 3 above mentioned & on account of which the relief he claimed & had granted to him by his motion of March 9th 1859 was not that the sheriff did not sell the right lots or real estate but was granted by the court on the ground that the sale did not take place upon the execution first levied upon different lots (i.e. upon lots 2 & 3 Block 1. aforesaid) which said grant of relief proceeded upon grounds which by the records aforesaid are shown to have been false, mistaken, absurd and impossible & therefore the said plaintiffs in error say the said adjudication of July 6th overruling the motion so made was

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erroneous and the said motion ought
to have been granted instead of being
overruled by the Court.

There is error also in this to wit
that prior to submitting to the Court
the motion of said defendants below
of June 20th 1859 decided & overruled
July 6th 1859 the records & files of the
Circuit Court in said cause in & of the
previous motion of March 9th 1859 had
been & were wrongfully & illegally altered
by adding to an unsworn & unofficial
certificate of the clerk of the plaintiffs
attorney, the clerk of the Circuit Court
certificate of an oath administered so
as to give to said certificate a false,
fraudulent & deception appearance of
an affidavit duly made to prove said
service, which paper so altered, on the
motion of June 20th 1859 aforesaid,
unknown to the makers of said mo-
tion writ before the said Circuit Court
as one of the grounds of the said motion
in that changed condition & was
calculated to mislead & deceive the
said Court & did mislead & deceive
the said Court inasmuch that said
Court overruled said motion whereas

the said motion according to the merits of the case truthfully stated ought to have been granted.

There is also error in this to wit: that the said Circuit Court on the motion of defendants below made on 20th June 1859. refused to hear oral argument and admitted for its consideration on the 5th of July 1859 & at other times after the 20th of June 1859 unknown to the attorneys for defendants below many affidavits & papers of an extrajudicial character which are made to appear in the bill of exceptions in this cause, which affidavits & papers were received by the court while the said cause was under advisement & unknown to & without any opportunity to answer or reply to same on the part of defendants below.

There is also error in this to wit: that the defendants motion submitted June 20th & decided July 6th 1859 designed to vacate the order of March 9th 1859 for its many errors the said circuit Court overlooking the numerous errors & irregularities & entire voidableness of its proceedings in the motion of March 9th of or said have suffered the said

Charles Keissig on his said resistance of the mo-
tion of July 6^c to be treated as entitled to all the
privileges of moving anew for an order to
have the effect of confirming the previous
irregular order of March 9^c made by the Court
without acquiring jurisdiction over the par-
ties. Whereas in truth & in fact & by the law of the
land the said order of March 9^c 1859
ought to have been vacated & set aside & dis-
annulled for its ^{irregularity & voidableness, &} entire want of original merit
to support it, as well as for the further reasons shown
by the defendants below on the motion of
July 6^c that it was inherently unjust & ir-
regular & subversive of right.

And the said Honzo Watson & Peter Northrup
pray that the adjudication aforesaid by
which on July 6^c the motion of them the said
defendants was denied, [&] overruled, may for
the errors aforesaid & other errors in the record
proceedings aforesaid may be reversed
vacated annulled & altogether held for
nothing and that the motion aforesaid
may be granted & that they the said defen-
dants below now plaintiffs in error may be
returned to all things which they have lost
by occasion of said adjudication and order
of July 6^c 1859

Nulla est ratio

C. Breckinridge

Walter Taft & Henry

attorneys for plaintiffs

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Supreme Court
of Illinois

Monzo Watson
& Peter Northrop
Plffs. in Error

^{vs}
Charles Reising
Def. in Error

Assign^t
of Error

Filed April 12, 1860
L. Leland
Clerk

Attorneys for Plaintiff & King

Attys for Plffs.
in Error