

No. 3094

Supreme Court of Illinois

John B. Hunter.

vs.

and other cases.

Nesley A. Ladd.

(379)  7

+
EVANS V. MERRIWETHER

+
LEA V. VAIL

+
WHEELER V. GREEN

+
BILLHAM V. STATE BANK

James H. Lea } Supreme Court Decr term 1838
^{vs}
Daniel Yail } Attachment

This was an action in Assumpsit on two promissory notes commenced by attachment Defendant moved to quash the attachment for want of Bond Plaintiff filed a cross motion to amend the Bond

But it is remembered that in this cause the Defendant by his attorney's moves the court to quash the attachment herein and enters his said motion and reasons therefor of Record which are in words and figures following To Wit

Municipal Court }
James H. Lea }
^{vs}
Daniel Yail } Attachment

Motion to quash the attachment & release the ^{property} attachment upon the following grounds

1st There is no Bond filed in this entitled cause as required by Statute authorizing the suing out of attachments

2nd The affidavit is insufficient as it does not disclose either of the causes set out in the Statute authorizing the issuing of an attachment

3rd There is no affidavit filed in the above entitled cause

4th There is no affidavit as required by the
Statute or ^{or} The affidavit filed is wholly in-
sufficiently

Bailey & Davis Attys for Defs

And on the same day of the said term of said
Court The Plaintiff by his attorney entered
upon the record of said Court his cross motion
for leave to amend the Attachment Bond here-
in which motion & Bond are in words and
figures following To wit

James H Sea } on attachment
vs } Municipal Court Oct term 1838
Daniel Tail }

Charles Krum for Pff move
to amend the Attachment Bond in this cause

Charles & Krum for Pff

"Know all men by these presents that We
James H Sea as principal and J G Lamb as
surety are held and firmly bound unto Daniel
Tail in the penal sum of Nineteen Hundred
Twenty Seven Dollars and Seventy Eight cents
for the payment of which we bind ourselves
our heirs executors and administrators. Witness
our hands and seals this 29th day of May 1838
The condition of this obligation is such that
whereas the above bounden James H Sea
hath on the day of the date hereof prayed
an attachment at the suit of himself against
the estate of the above named Daniel Tail
for the sum of Nine Hundred Sixty three Dol-

lars. and Eighty nine cents and the same being
about to be sued and returnable on the Sec-
ond day of July next to the term of the Mun-
icipal Court of the City of Alton in the County
just aforesaid then to be holden. Now if the
Said James St. Lea shall prosecute his Suit
with effect or in case of failure therein shall well
and truly pay and satisfy the Said Daniel Tail
all such costs in said Suit and such dam-
ages as shall be awarded against the Said
James St. Lea his heirs Executors or Admin-
istrators in any Suit or Suits which may
hereafter be brought for wrongfully suing
and said attachment then the above obli-
gation to be void otherwise to remain in full
force and effect

James St. Lea (Seal)
Plaintiff (Seal)

Which said motion of said Plaintiff to file
an Amended Petition was overruled by said
Court to which opinion of the said Court
the said Plaintiff by his attorneys excepts
and tender his Bill of Exceptions and prays
that the same may be sealed and made part
of the Record

And be it further remembered that
said Court upon the said Defendants said mo-
tion and reasons filed as aforesaid ordered and
adjudged that said attachment of said Plaintiff
be quashed to which opinion of the said Court
the P'tff by his attorneys except and prays that the
same may be sealed and made part of the re-
cord

William Martin (Seal)
Judge of the Municipal Court
of the City of Alton

James & Lea

^{vs}
Samuel Tail

Prin of Exceptions

Indep Brown

Submitted without
argument —

James T. Lea } Supreme Court Secr Term 1838
 as } Attachment
 Daniel Tail } Error from the Municipal Court of the City of Alton
 October Term 1838

And now comes
into Court here the said Plaintiff James H. Lea
by his attorneys Lawler & Krum and says that
in the Judgment and proceedings of the Court
below there is Error.

First In sustaining the motion of the Defendants counsel below and overruling the motion of the Plaintiffs Counsel to Amend the Attachment Bond

Second Rendering
Judgment for the Defendant When Judgment
ought to have been rendered for the Plaintiff

Third In quashing the Plaintiffs attachment

For these and other reasons apparent on said
Records the Plaintiff prays the said Judg-
ment may be reversed

Cowles & Krum for Puff

Pomp

Trust that the affidavit is sufficient and according to the requirements of the Statute

Second That the attachment Bond was amendable by the provisions of the 28th Section of the "Act concerning attachments" See Revised Code

Pa 82-93

James H. Lea
Daniel Vail
Assignment of Cron