

No. 13093

Supreme Court of Illinois

People

vs.

Wardlaw et al

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division.

No. 60.

360

People

vs

Hardlow

Hardlow

Pepper

13093

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

THE PEOPLE, &c.,
for the use of
JOHN H. KEDZIE,

vs.
ANDREW WARDLAW,
SHEPHERD MOORE, and
ROBERT MOORE.

} Error to Putnam.

POINTS FOR DEFENDANTS IN ERROR.

THIS action purports to be brought against Wardlaw as sheriff, and the other defendants as his sureties, on his *official* bond. Against sureties the law intends nothing, and every presumption is in their favor. For the *sureties* we make the following points:

I. There is no allegation in the declaration that Wardlaw had been elected sheriff. The recitals in the condition of the bond (even if they were set out) are not *allegations* of the *fact*.

II. There is no allegation in the declaration that the bond was ever *delivered* by the defendants as the *official* bond of the sheriff. The allegation that it was "*lodged* with the clerk" and "*received* by the people" as the sheriff's official bond, do not amount to an allegation of delivery. Every allegation of the declaration in that regard may be true, and yet the bond never have been delivered or intended to be delivered by the sureties.

III. The statute requires the official bond of the sheriff to be approved by the Judge of the Circuit Court, at the next term after its filing, but if there shall be no term of the Court within thirty days after notice of the commission, then the clerk may approve the bond, and it stands good until the end of the next term of the Court. Scates' Stat., pages 1122, 1123, Sec. 2. This declaration contains no allegation that the bond was ever approved by the Judge. The approval of the clerk could only make it good as an *official bond* until the end of the next term of the Court, and the non-feasance complained of is not alleged to have occurred before that time.

The declaration contains but one count, with several breaches. The demurrer sustained by the Court was to the declaration and each breach

thereof. The points already made apply to the declaration, and if either of them is good the demurrer was properly sustained.

But we make the following additional points against the breaches assigned:

IV. Neither of the breaches assigned alleges that there was any *judgment* upon which an execution could properly issue. All the allegations may be true and yet the execution be one that the sheriff had a right to refuse to execute. As against the *sureties*, the declaration should show a state of facts in which the sheriff should not merely be *justified* in acting, but in which he was *bound* to act.

V. The third breach assigned, presents the question whether the *sureties* of the sheriff are liable in an action upon the *official bond*, for the neglect of the *late* sheriff in not executing a writ of *venditioni exponas*, issued to him after the expiration of his term of office. We insist that they are not. The judgment creditor may take the writ either to the acting sheriff or to the late sheriff who made the levy. If the creditor desires to hold the sheriff in his official capacity, he can take the writ directed to him. If he takes it to the *late* sheriff, he relies upon the *man* and not upon the officer. Any neglect by the *late* sheriff to execute process directed to him after the expiration of his term of office, he himself may be liable for; but to make his *sureties* liable therefor, would be to extend the liability of the *sureties* beyond the undertaking of the bond. They undertook that Wardlaw should perform all the duties required of him as *sheriff* merely. Their liability did not extend beyond his acts done whilst he held the office of sheriff.

WALLACE & COOK,
For Defendants.

Ms
Mendelsohn et al

25

Mudlaco et al.

Points for depts

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

THE PEOPLE, &c.,
for the use of
JOHN H. KEDZIE,

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Proper use of Kedonic

as

Mardlaw et al

Points for dist

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signed:

But make the following additional points against the practice as
from them the gentleman was properly explained.
points already made apply to the declaration and if either

may be true and yet the execution be one that the sheriff had a right to
make upon which an execution could properly issue. All the objections
I have written of the practice assigned officers that there was no "warrant"

ing, but in which he was found to act.

A. The third process assigned presents the question whether the
warrant of the sheriff was made in an action upon the office bond, the

the sheriff was not. The judgment creditor may take the writ return to
that they are not. The judgment creditor may take the writ return to
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directed to him. If he takes it to the law should he take upon the writ
for duties to hold the sheriff in his official capacity, he can take the writ
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WILLIAM A. LORR

For the Plaintiff

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

THE PEOPLE, &c., for the use of JOHN H. KEDZIE, vs. ANDREW WARDLAW, SHEPHERD MOORE, and ROBERT MOORE.	}	Error to Putnam.
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WALLACE & COOK,
For Defendants.

STATE OF ILLINOIS, }
SUPREME COURT,
Third Grand Division.

APRIL TERM, A. D. 1860.

People for the use of Kedzee, vs. Andrew Wardlaw et al. Error to Putnam.

POINTS, AUTHORITIES AND ARGUMENT FOR PLAINTIFFS IN ERROR.

The only question presented by the Record in this cause is whether the Circuit Court erred in sustaining the Defendants' Demurrer to Plaintiff's Declaration.

And the only point urged against the Declaration that I am aware of is, whether the judgment is sufficiently described on which the Execution issued.

We say in the first place it is; and in the second place that the Declaration would be good if it was not described at all. That judgment is not the foundation of this action, nor even the inducement.

Is the Sheriff not bound in law to execute process regular upon its face, or at least is he not prima facie liable if he does not?

Was not the process set forth in this Declaration regular upon its face?

It was not only so but the Sheriff recognized it as such by acting under it and making the levy.

Then was he not in duty bound to dispose of the levy by sale, or at least is this not prima facie so?

All that is necessary in a Declaration is to make out a prima facie case.

If the Sheriff violated his official duty by neglecting or refusing to sell property levied upon by virtue of an Execution regular upon its face, is he not prima facie liable in this form of action?

Is he not liable in this form of action for not returning a writ of vendi exponas directed and delivered to him which was regular upon its face?

Buckmaster vs. Drake, 5 Gil, 321.

Clerk vs. Withers, 2 Lord R., 1075.

Reddick vs. Clouds, Adm'r, 2d Gil, 677.

Barnes vs. Barber, 1 Gil, 401.

Jeff vs. Ashbaugh, 13 Ill., 603.

Cox vs Joiner, 4 Bibb, 94.

Phillips et al vs. Dana, 3 Scam., 558.

Bybee vs. Ashley, 2d Gil, 165-6.

McDonald vs. Wilke, 13 Ill., 25.

D. P. JENKINS, Atty. for Pltff. in Error.

60-71

People for use Kedzie
Notes as
Hand laid out

Plaintiffs points

Filed Apr 20, 1862

L. Leonard
Clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of Putnam _____ Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit _____ Court of Putnam County, before the Judge thereof, between The People of the State of Illinois for the use of John H. Kedzie _____

plaintiff, and Andrew Wardlaw, Shepherd Moore and Robert W. Moore _____

defendants, it is said that manifest error hath intervened, to the injury of the said plaintiffs _____

as we are informed by the complaint of said plaintiffs the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Andrew Wardlaw, Shepherd Moore & Robert W. Moore _____

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Andrew Wardlaw, Shepherd Moore & Robert W. Moore _____ notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 21st day of October in the Year of Our Lord One Thousand Eight Hundred and Fifty-nine.

L. Leland
Clerk of the Supreme Court.
J. B. Rice Deputy

The People of the State
of Illinois &c. 60

Andrew Wardlaw & others.

Sci Ja

I have duly served this
writ by reading the same to
Shepherd Moore & Robert
W. Moore this 23^d day
of Feby 1860. & reading
the same to Andrew Ward-
law this 29th day of
February A.D. 1860.

Service on 3 \$1.50

Mileage 1.00

Returning .10

Paid by official 2.60

John T. Girberich

Sheriff Rutman Co. Ills.

Filed March 22. 1860

L. Leland
Clerk

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Sheriff of the County of

Putnam

Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the *Circuit* Court of *Putnam* County, before the Judge thereof, between *The People of the State of Illinois for the use John H. Kedzie* plaintiff, and *Andrew Wardlaw, Shepherd Moore and Robert W. Moore*

defendants, it is said that manifest error hath intervened, to the injury of the said *plaintiffs*

as we are informed by *the* complaint, of said *plaintiffs* the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said *Andrew Wardlaw, Shepherd Moore and Robert W. Moore*

that *they* be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if *they* shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said *Andrew Wardlaw, Shepherd Moore and Robert W. Moore* notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this *5th* day of *April* in the Year of Our Lord One Thousand Eight Hundred and Fifty-*nine*

L. Deland

Clerk of the Supreme Court.

By J. B. Rice Deputy

The People of the State
of Illinois versus
vs 60

Andrew Wardlaw & others
Secy for

I served this Writ by
reading the same to the
within named Andrew
Wardlaw, Shepherd Moore
and Robert W. Moore this
9th day of April A.D. 1859

Service on 3 = 1.50

Mileage 14 m = .40

Return 1.10

Postage .03

Fees paid \$2.35

John P. Gerberich
Sheriff Putnam Co. Ill.

Filed April 14 1859
L. Leland
Clerk

The People of the State of Illinois for use of John McKeed No 148 vs Andrew Mandlano Shepherd Moore & Robert W Moore	In Supreme Court 3^d Grand Division State of Illinois At the Office Term then of A.D. 1859 Error to Putnam
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The Plaintiffs in Error by their Attorney now comes and "moves the Court to set aside the order here before entered in this cause at this term of the Court - dismissing this cause."

And Pltffs atty assigns as a reason for vacating said order or re-instating said Cause the following -

1st This Cause comes into this Court on a Demur sustained to plaintiff declaration by the Court below and the only question presented by the record is whether the Court below erred in sustaining said demur -

The Atty for the depts caused a rule to be entered in this Court that the Pltffs should assign

errors and file abstracts by the 22^d
day of this present month of
April - and for this want of such
assignment of errors and the
filing of said abstracts - ~~by~~
The time last aforesaid this
Court dismissed this cause

When in fact the abstracts
to the number and in the man-
ner required by the rules of this
Court in such cases - had been
filed with the clerk of this
Court on the 21st day of April
A.D. 1859 and one day before the aforesaid
rule expired by its terms. And
at the conclusion of said
abstract ~~there were~~ the
errors complained of were assigned
and printed - and subject
to the examination & inspection
of the Dist. atty

April 26th 1859

D. P. Jenkins

Atty for the Motion

~~148~~ 60

The People &c
for use of Kedzie

vs

A Wardman &
Shal

Motion to set
aside order dis-
missing writ of
Error

Filed April 26, 1889
L. Leland
Clerk

D. P. Jenkins
for the motion

Putnam County Circuit Court
April Term A. D. 1857. Monday, April 27th

State of Illinois, }
Putnam County, } ss

Pleas before the Hon. Martin Callan,
Judge of the Circuit Court in and for said County
(in the 23^d Judicial District of which he is the
Judge) at a Term of said Circuit Court begun
and held at the Court House in Kennebec on Monday
the Twenty Seventh day of April A. D. 1857.

Present Hon Martin Callan, Judge,
George W. Stipp, State attorney,
Jeff Burley, Sheriff,
George Bent, Clerk.

Be it remembered that heretofore to wit. on
the 17th day of April A. D. 1856 John W. Kedzie, sued
out of the Circuit Court a certain writ of Summons which
was in the following words and figures to wit—

State of Illinois, }
Putnam County, } ss. The People of the State of Illinois,
to the Sheriff of said County. Greeting

We command you that you Summon Andrew
Wardlaw, Shepherd Moore, and Robert W. Moore,
if they shall be found in your County, personally to be
and appear before the Circuit Court of said County.

And afterwards to wit on the 28th day of November A.D. 1837. was filed in said Court a declaration in words and figures following to wit,

Dec

State of Illinois } In the Circuit Court in
Putnam County. } and for said County,

The People of the State of Illinois }
for the use of John N. Redzie }
vs } In Debt
Andrew Wardlaw, Shepherd Moore }
& Robert W. Moore }

Page 4

Andrew Wardlaw
Shepherd Moore and Robert W. Moore, defendants
in this suit, were summoned to answer unto the People
of the State of Illinois Plaintiffs herein for the use of
John N. Redzie of a Plea that they render to the said
Plaintiffs for the use aforesaid, the sum of Ten Thousand
Dollars which they owe to and unjustly detain from said
Plaintiffs for the use aforesaid, whereupon the said Plaintiffs
by D. P. Jenkins their attorney in a Plea of debt complain
of defendants for that whereas heretofore to wit on the
fifteenth day of November in the year of our Lord One
Thousand Eight Hundred and fifty. at Mennepin to wit
at the County of Putnam aforesaid by their certain writing
obligatory commonly called an official Bond sealed with their seals
and now to the Court here shown, the date whereof is the day
and year aforesaid. acknowledged themselves held and firmly
bound unto the People of the State of Illinois in the Penal sum of

In Thousand dollars, current money of the United States of America to be paid to said Plaintiffs and for the payment of which well and truly to be made, the said defendants thereby bound themselves, their, heirs, executors and administrators jointly and severally, which said writing obligatory was and is subject to a certain condition thereunder written. whereby after reciting to the effect following. that whereas the afore named Andrew Wardlaw had been duly elected Sheriff of the County of Putnam and State of Illinois aforesaid it was provided, in and by said condition, that, if the said Andrew Wardlaw should faithfully discharge all the duties required or to be required of him by law as Sheriff of the County of Putnam aforesaid, then said obligation to be null and void, otherwise to remain in full force and virtue, And which said writing obligatory with the condition aforesaid thereunder written was then and there received by the people of the

3 State of Illinois, as the official Bond of the said Andrew Wardlaw as Sheriff of the County of Putnam aforesaid with the said Shepherd Moore and Robert W. Moore as his sureties in the premises and then and there lodged with the Clerk of the Circuit Court of said County by the defendants. And there being no term of the Circuit Court to be held in said County within thirty days after, said Clerk gave notice to the said Andrew Wardlaw of the receipt of his commission as Sheriff of said County. The said Clerk of said Court on the reception of said writing obligatory with the condition thereunder written as aforesaid then and there approved of the same as the official Bond of said Andrew Wardlaw as Sheriff of the County aforesaid. and thereupon the said Andrew Wardlaw then and from thenceforth untill and at and after the misconduct of the said Andrew Wardlaw as Sheriff of the County aforesaid hereinafter complained of took upon himself to discharge the duties of and was then and there Sheriff of said County and so continued to be Sheriff of said County untill the expiration of two years from the fifth day of November in the year aforesaid and untill his successor was duly elected and qualified

Yet the said Plaintiffs in fact say

6
that the said Andrew Wardlaw, did not faithfully discharge all the duties required of him as Sheriff of said County of Putnam according to the condition of said writing obligatory but during the time for which he was elected to fill said office of Sheriff as aforesaid wholly neglected and refused so to do. For that whereas heretofore to wit, on the thirteenth day of December A.D. Eighteen Hundred and fifty, at the County of Putnam aforesaid, the said John N. Kedzie, sued and prosecuted out of the Clerks office of the Circuit Court in and for said County a certain writ of Execution in due form of law directed to the Sheriff of said County by which said ~~suit~~ writ the said Sheriff was commanded that of the goods and chattels lands and tenements of one William Ray, in his County he should cause to be made the sum of One Thousand Dollars debt and Six Hundred and Seventy seven dollars and fifty cents, damages which the said John N. Kedzie on the eighth day of October in the year eighteen hundred fifty before the Circuit Court of Putnam County recovered against him the said William Ray for his debt and damages together with lawful interest thereon from the Eighth day of October A.D. Eighteen Hundred and fifty untill paid, also the sum of four dollars and forty three and one half cents which was by the said Court adjudged to the said John N. Kedzie for costs and charges by him expended about his suit in that behalf, whereof the said William Ray was convicted as appears of record and that he the said Sheriff should have the money at the Clerks office of said Court within ninety days from the date thereof to render unto the said John N. Kedzie the debt interest and charges aforesaid and should have then and there said writ, And Plaintiffs ^{aver} ~~aver~~ that the said writ of Execution and the judgement on which it was issued were in due form of law and in full force and effect not reversed and was unsatisfied in whole or in part and whilst said judgement was so in full force and effect and not satisfied, either in whole or in part to wit, on the fourteenth day of December A.D. Eighteen Hundred and fifty at Kinnepin to wit, at the County
6. aforesaid, the said writ of Execution being in due form of law as

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aforesaid was delivered to the said Andrew Wardlaw to be by him
 as Sheriff of said County Executed in due form of law, he then
 being Sheriff of said County and from thence forth untill his said
 term of two years as aforesaid, expired and his successor elected and
 qualified continued to be Sheriff of said County and so being and
 continuing to be Sheriff as aforesaid. At the said Andrew Wardlaw,
 afterwards by virtue of the said writ of Execution to wit on the
 fourteenth day of December A.D. Eighteen Hundred and fifty
 at the County aforesaid did levy upon a lot of Corn in the Crib
 being a large amount of Corn to wit, Five Thousand bushels of great
 value to wit of the value of thirty five cents for each and every
 bushel thereof and afterwards to wit on the Eighth day of January
 A.D. Eighteen Hundred and fifty one at the County aforesaid by virtue
 of the Execution aforesaid, did levy upon another lot of corn in the
 crib being a large amount to wit. Three Thousand bushels of
 great value to wit. of the value of thirty five cents for each and
 every bushel thereof, all of the said Corn being then in a crib near
 said Ray's Pork House near the town of Kennebec in the County
 aforesaid and being the property of the said William Ray, to satisfy
 the said writ of Execution which said goods and chattels so levied
 upon Plaintiffs, ever would have been amply sufficient to satisfy said
 writ of Execution if the same had been exposed to sale and sold by
 virtue of said writ of Execution and the levy made under and
 by virtue of the same, yet the said Andrew Wardlaw, continuing
 to be Sheriff as aforesaid during the life time of said writ,
 continually neglected from the time said writ was delivered to him
 to execute as aforesaid until the return day of the same and has
 ever since neglected and wilfully omitted to advertise or offer for
 sale, the said goods and chattels so levied upon by him as
 Sheriff as aforesaid. And the said Plaintiff for assigning
 a further breach of the said condition of the said writing obligatory
 according to the form of the Statute in such case made and
 provided further say that afterwards, to wit
 8. on the thirteenth day of December A.D. Eighteen Hundred and
 fifty at the County aforesaid, said John W. Redzie sued and

8 prosecuted out of the Circuit Court in and for the County of Putnam aforesaid a certain writ of *Fieri facias* commonly called *Writ of Execution* directed to the Sheriff of said County, by which said writ the said Sheriff was commanded that of the goods and chattels lands and tenements of one William Ray in this County he should cause to be made the sum of One Thousand Dollars debt and Six hundred and Seventy seven dollars and fifty cents damages which the said John N. Kedzie on the Eighth day of October A.D. Eighteen Hundred and fifty before the Circuit Court of Putnam County recovered against him the said William Ray for his debt and damages together with lawful interest thereon from the Eighth day of October A.D. Eighteen Hundred and fifty untill paid also the sum of four dollars and forty three and one half cents which was by the said Court adjudged to the said John N. Kedzie for costs and charges by him expended about his suit in that behalf whereof the said William Ray was convicted as appears of record and that the said Sheriff should have the money at the Clerk's Office of said Court within ninety days from the date thereof to render unto the said John N. Kedzie the interest and charges aforesaid and should have then and there said writ, and which said writ and the judgement on which it was issued were in due form of law and in full force and effect. And which said writ afterwards to wit on the fourteenth day of December A.D. Eighteen Hundred and fifty at Kennebec to wit at the County aforesaid was delivered to the said Andrew Wardlaw, he then being Sheriff of said County to be by him as Sheriff as aforesaid executed in due form of law. And afterwards to wit on the fourteenth day of December A.D. Eighteen Hundred and fifty at the County aforesaid the said Andrew Wardlaw Sheriff as aforesaid by virtue of the said writ of Execution and of the authority vested in him by virtue of his office of Sheriff of said county levied upon a lot of corn in the Crib being a large amount of Corn to wit Five Thousand bushels of great value to wit of the value of thirty five cents for each and every bushel thereof and afterwards to wit on the Eighth day of January A.D.

Eighteen Hundred and fifty one at the County aforesaid levied upon an other lot of Corn in the Crib being a large amount of Corn to wit, Three Thousand bushels of great value to wit of the value of thirty five cents for each and every bushel thereof, all of the said Corn being then in a crib near said Ray's Pork House near the town of Kennepin in the County aforesaid and being the property of the said William Ray, to satisfy the said writ which said Goods and Chattels so levied upon as aforesaid Plaintiffs aver would have been - amply sufficient to satisfy the said writ of Execution if the same had been exposed to sale and sold under and by virtue of said writ, yet the said Andrew Wardlaw then being Sheriff as aforesaid of the County

11. aforesaid wilfully, carelessly and negligently permitted and suffered the said goods and chattels so levied upon to become wholly lost and destroyed wherefore and by reason of the said carelessness, negligence and misconduct of the said Wardlaw Sheriff as aforesaid the amount of the said debt, damages and costs so adjudged to the said John N. Kedzie has been wholly lost to the said John N. Kedzie. And the said Plaintiffs for assigning a further breach of the said condition of the said writing obligatory according to the form of the Statute in such cases made and provided further say that afterwards to wit, on the fourteenth day of December A.D. Eighteen Hundred and and fifty and whilst the said Andrew Wardlaw was Sheriff of Putnam County as aforesaid, did by virtue of a certain writ of Execution which was in due form of law and in full force to wit on the fourteenth day of December A.D. Eighteen Hundred and fifty in the cause wherein John N. Kedzie was Plaintiff and William Ray was defendant levy upon a lot of Corn in the Crib being a large amount of Corn to wit, Five Thousand bushels of great value to wit, of the value of thirty five cents, for each and every bushel thereof

12 and afterwards to wit on the Eighth day of January A.D. Eighteen Hundred and fifty one, the said Wardlaw being Sheriff as aforesaid did by virtue of the same writ levy upon

a certain other lot of corn in the crib being a large amount of corn to wit, Three Thousand bushels of great value to wit, of the value of thirty five cents for each and every bushel thereof all of the said Corn being then in a crib near said Rays Pork House near the town of Hennepin in the County aforesaid and being the property of the said William Ray to satisfy the said writ and afterwards to wit on the Eleventh day of August A. D. Eighteen Hundred and fifty four, the said John N. Kedzie caused to be issued out of said Circuit Court in and for said County upon the judgement obtained in said cause against the said William Ray, which said judgement was in due form of law and in full force and effect, a certain writ of Venditioni Exponas, Execution in substance as follows to wit,

State of Illinois Putnam County J.

John N. Kedzie vs William Ray }

13 The People of the State of Illinois to Andrew Wardlaw, late Sheriff of said County greeting, whereas at the October Term A. D. Eighteen Hundred and fifty of the Circuit Court of said County by X the consideration of said Court John N. Kedzie, recovered judgement against William Ray for one thousand dollars, debt and Six Hundred and Seventy Seven dollars and fifty cents, damages and also for the costs by said John N. Kedzie, expended in said ^{suit} ~~case~~ and whereas an Execution dated December 13th A. D. 1850, and sealed with the Seal of said Court was issued on said judgement and delivered to you as Sheriff of said County to cause to be made, the said debt and damages ^{with} interest thereon, and said costs. And whereas it appears from your return indorsed on and attached to said Execution, that by virtue of said Execution you on the 14th day of December A. D. 1850 levied on the following described property viz, a lot of Corn in crib supposed to be five thousand bushels more or less, situated in a crib or pen near said Rays Pork House taken as the property of said William Ray near the town of Hennepin, also

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14

that on the 30th day December A.D. 1850, you made
an additional levy on the corn supposed to be three
thousand bushels more or less put in said crib after said
former levy also that you levied on the following described
real estate viz, Lot Number five in Block Number Twelve
also lot thirteen in Block five in Town of Kennepin, also
lots eight and nine in Block One hundred and Twelve
in west addition to Kennepin, also one store house situated
on North side of lot No Three in Block Number two in Town
of Kennepin, also one Warehouse, situated on North side of
center third of lot Number one in Block Number Two
in Town of Kennepin, together with the ^{unexpired} ~~unexpired~~ lease
on said lots where the houses stand to run four years from
the 4th day of February A.D. 1851, also a part of North
East quarter of Section No Nine Township 32 North of
Range 2 West bounded as follows, commencing at a
point on the Illinois River where the North line of
Locust street of the Town of Kennepin, touches said
River running thence Northward on the margin of said
River One hundred and sixty feet, thence South sixty
seven degrees East to a point where a right line extended
along the west side of the alleys running Northward
through the front tier of Blocks in the Town of Kennepin
would cut said line, at right angles, thence South
twenty three degrees west along said Section line dividing
said Section Nine, thence west along said Section line to a
point where it cuts the North line of Locust Street thence
along the North line of Locust Street to the place of
beginning containing two acres more or less, And whereas
also among other things it appears from your said return
that said Execution was returned for want of time to
sell during the life time of said Execution, And whereas
the said Debt and damages together with the interest
and the costs expended in said suit by said Plaintiff
Kedzie remain to be satisfied the costs now amounting

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to six and $\frac{32}{100}$ Dollars, we therefore command you, that unless prevented by authority of law or enjoined by legal authority, you expose to sale the said goods and chattels, lands and tenements, by you in form aforesaid taken so that you may have the money ready as soon as may be to render as the law directs. ~~They~~ make return within ninety days from this date. Fail not.

Witness George Lent, Clerk of said Court
 16 ~~by~~ by whom is affixed the Seal of said Court at
 Kennebec this 11th day of August A.D. 1854.
 George Lent Clerk
 By Thomas Lent Deputy CK

And the Plaintiffs aver that afterwards to wit, on the Eleventh day of August A.D. Eighteen Hundred and fifty four at the County aforesaid the said writ of Venditioni exponas was delivered to the said Andrew Wardlaw to be executed by him in fulfillment of his duties as late Sheriff of the County of Putnam aforesaid and by reason of this having made the levy set forth as aforesaid and Plaintiffs further aver that the ~~said~~ said goods and chattels lands and tenements so levied upon as aforesaid by the said Andrew Wardlaw, at the time of the delivery of the said last mentioned writ to the said Wardlaw as aforesaid had not been sold by said Wardlaw, as Sheriff of said County of Putnam nor by any person having lawful authority so to do, and that the same were amply sufficient to satisfy said writ of the same had been exposed to sale and sold by said Wardlaw, as he was by said writ commanded, yet the said Andrew Wardlaw then and there continually during the life time of the said writ of Venditioni Exponas and from the issuing and delivery to him of the same as aforesaid and thence hitherto fully omitted and neglected to advertise or offer the said goods and chattels

lands and tenements so levied upon by him as Sheriff, as
 aforesaid for sale and has thence hitherto wilfully omitted and
 neglected to make return of the said last mentioned writ as he
 was thereby commanded but the same to do still doth neglect
 and refuse. And the said Plaintiff for assigning a further
 breach of the said condition of the said writing obligatory according
 to the form of the Statute in such case made and provided
 further say that on to wit. the 13th day of December A.D. 1850,
 at the County aforesaid, said John N. Kedzie, sued and prosecuted
 out of the Clerk's office of the Circuit Court in and for the
 County of Putnam aforesaid, a certain writ of Execution being
 the same writ of Execution referred to in the second breach
 assigned in this Declaration and which said writ of
 Execution was in due form of law and in full force and
 effect directed to the Sheriff, of Putnam County aforesaid
 18 to execute by which said writ. the said Sheriff, was
 commanded that of the goods and chattels lands and
 tenements of one William Ray, in this County he should
 cause to be made the sum of One thousand dollars, debt
 and Six Hundred and Seventy - Seven dollars and fifty
 cents damages which the said John N. Kedzie on the
 Eighth day of October A.D. 1850, before the Circuit Court of
 Putnam County aforesaid recovered against him the said
 William Ray, for his debt and damages together with lawful
 interest thereon from the Eighth day of October A.D. 1850
 untill paid also the sum of four dollars and forty three
 and one half cents which was by the said Court
 adjudged to the said John N. Kedzie for costs and charges
 by him expended about this suit in that behalf expended
 whereof the said William Ray, was convicted as appears of
 record and that the said Sheriff should have the money at
 the Clerk's office of said Court within ninety days from the date
 thereof to render unto the said John N. Kedzie the debt interest
 19 and charges aforesaid and should have then and there said
 writ which said writ afterwards to wit. on the fourteenth

14 day of December. A.D. 1850 at Hennepin to wit, at the County aforesaid was delivered to the said Andrew Wardlaw he then being Sheriff of said County to be by him as Sheriff as aforesaid executed in due form of law and which said writ was in due form of law and in full force and effect.

* And afterwards to wit, on the fourteenth day of December A.D. 1850, at the County aforesaid the said Andrew Wardlaw then being Sheriff of said County as aforesaid by virtue of the said writ of Execution and of the authority vested in him by virtue of his office of Sheriff of said County levied upon a lot of corn in the crib being a large amount of corn to wit Five Thousand Bushels of great value to wit of the value of thirty five cents for each and every bushel thereof and afterwards to wit on the Eighth day of January A.D. 1851, at the County aforesaid levied upon an ^{other} ~~part~~ lot of Corn in the Crib being a large amount of Corn to wit. Three Thousand Bushels of Corn of great value to wit of the value of thirty five cents for each and every bushel thereof all of the said Corn being then in
20 a crib near said Rays Pork house near the Town of Hennepin in the County aforesaid and being the property of the said William Ray to satisfy the said writ, which said Goods and Chattels so levied upon as aforesaid Plaintiffs aver were sufficient to satisfy said writ of Execution if the same were exposed to sale and sold under and by virtue of said writ yet the said Andrew Wardlaw, Sheriff as aforesaid has wilfully carelessly and negligently omitted and neglected to make any legal return of said writ of Execution by reason whereof the said John W. Kedzie has been deprived of the benefit of the levy made upon the Goods and Chattels aforesaid by the said Wardlaw as Sheriff as aforesaid and the said John W. Kedzie has not been paid his said debt, damages or costs or any part thereof.

And so the People of the State of Illinois in fact say that the said Andrew Wardlaw did not
21 faithfully discharge all the duties required of him by law as Sheriff

of the County of Putnam aforesaid and that the said John H. Kedzie has been injured by the neglect and misconduct of the said Andrew Wardlaw as Sheriff as aforesaid and by reason of the non-performance by him the said Wardlaw of his duties in that behalf: whereby an action hath accrued to the People of the State of Illinois to demand and have of and from the defendants to this suit the said sum of Ten Thousand dollars for the use of the said John H. Kedzie; yet have not the said defendants, nor hath either of them paid the same or any part thereof to the damage of the said Plaintiff of Ten Thousand dollars and therefore they bring this suit &c

By L. P. Jenkins
their atty

Circuit Court, April Term A.D. 1858
State of Illinois }
Putnam County } ss

Pleas before the Hon Martin Ballou,
Circuit Judge, sitting in and for the County aforesaid, in
the 23rd Judicial District, At a Term of the Circuit Court
of said County, begun and held at the Court House in
Wenepin in said County on the fourth Monday (26th day)
of April A.D. 1858

Present, Hon Martin Ballou, Judge 23rd Judicial District,
Geo. W. Stupp, States atty,
Jefferson Birley, Sheriff,
George Dent, Clerk.

And afterwards to wit on the 27th day of April
A.D. 1858, the defendants filed, their demurr, in the words
and figures following to wit,

State of Illinois } In the Circuit Court of said County
Putnam County } April Term 1858,
The People &c for the use of }
John. H. Kedzie }

vs
 Andrew Wardlaw Shepherd Moore } Debt
 & Robert W. Moore }

And now come the said Andrew Wardlaw, Shepherd Moore and Robert W. Moore by Wallace & Dent, their attorneys and demur to the Plaintiffs Declaration therein against them and say, that the said declaration and each breach therein assigned is insufficient in law. and said defendants are not bound by law to answer unto the same wherefore they pray judgement &c.

Wallace & Dent
 for Defs Moores

And Plaintiff replied in words and figures following &

And the said Plaintiffs by their Attorney D. P. Jenkins now comes and joins in demur and says - That the said Declaration and each Count or assignment therein is good and sufficient in law, and pray judgement on the same against them

By D. P. Jenkins their atty

And afterwards to wit on the 28th day of April the following proceedings were had
 The People of the State of Illinois
 for the use of John N. Kedzie }

vs
 Andrew Wardlaw, Shepherd Moore } Debt
 and Robert W. Moore }

The parties again appear

by their respective attorneys, - D. P. Jenkins for the Plaintiffs and W. H. L. Wallace for the defendants, and the demurrer to the last amended declaration comes on to be heard, words and arguments of counsel are thereon heard

And afterwards to wit on the 30th day of April. 1838, one of the days of said Term, the following order was entered of record (words and figures following to wit)

The People of the State of Illinois
for the use of John N. Kedzie

vs
Andrew Wardlaw, Shepherd Moore
& Robert H. Moore

Debt

The parties again appear by their respective Attorneys, and the Court having considered the arguments of counsel upon the demurrer to the last amended declaration, and being fully advised in the premises the Court is of the opinion that said declaration is insufficient in law, and therefore it is ordered and considered that said demurrer be sustained

And inasmuch as the Plaintiffs do not ask leave to further amend their declaration, it is further considered that said defendants go thence sine die and recover of the said John N. Kedzie their costs therein expended to be taxed and have Execution therefor,

Thereupon the Plaintiffs pray an appeal to the Supreme Court, and it is ordered that it be and it is allowed, on condition that said John N. Kedzie

18

with David P. Jenkins as ^{his} security execute and file with the Clerk of this Court within thirty days from this date, an appeal bond herein in the penal sum of Two hundred dollars,

State of Illinois. }
County of Putnam. } I George Dent Clerk of the Circuit Court in and for said County in the State aforesaid do hereby certify the foregoing to be a true and correct copy of the original writ 2nd amended Declaration and the records of Court made in the cause which are on file in my office

Given under my hand and Seal official
this 13th day of February A.D. 1859

George Dent
Clerk Circuit Court
per M. Dent S.C.

(Assignment of Error)

The Plaintiffs in error now come &c by their Attorney and say there is manifest error in the foregoing record in this to wit - That the Court below erred in sustaining the Defendants demurr to Plaintiffs declaration and ask this Court to reverse the decision of the said Circuit Court in sustaining said demurr & remand the cause for further proceedings therein - D. P. Jenkins
April 26th 1859 for Pliffs in error

And now come the said defendants
in error by Cook & Wallace their counsel
and say that in the record of the proceedings
aforesaid there is no such error as the
said plaintiff hath above assigned, and
that they pray may be inquired of by the court
Wherefore they pray that said judgment
may be in all things affirmed &c

Cook & Wallace
counsel for defendants in error

60 188 390

The People vs the use
of John W. Keazie

vs
Andrew Wardlaw et al

Transcript

Filed April 14 1859

L. Deland
Clerk

Re filed May 28 1859

L. Deland
Clerk

STATE OF ILLINOIS,
SUPREME COURT,

} ss. The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Putnam Greeting:

Because, In the records and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Putnam County, before the Judge thereof, between ~~The People of the State of Illinois~~ for the use of John H. Kedzie

plaintiffs and Andrew Wardlaw, Shepherd Moore and Robert W. Moore.

defendants, it is said manifest error hath intervened, to the injury of the aforesaid plaintiffs

as we are informed by ~~the~~ the complaint of said plaintiffs and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the records and proceedings of the plea aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 5th day of April in the Year of Our Lord one thousand eight hundred and fifty-nine

Clerk of the Supreme Court.

J. B. Rice Deputy

The People of the
State of Illinois for use,
as to
Andrew Ward as the
Writ of Error

Filed April 5, 1859
L. Leland
clerk.

The People &c for the use of the district	} Supreme court April term 1859. Error to Putnam -
vs	
Andrew Wardlaw	
et al	

The defendants in error resist the motion to set aside the order dismissing the writ of error in this case because no error was assigned on the record as required by the rule - The plaintiff in error was not concluded by the printed assignment of errors filed with the abstracts. They constituted no such assignment of errors as is required by the rule, and even if defts had known of the filing of the abstracts (which they did not) they would not have been bound to notice them nor could they properly have joined the errors on the abstracts. - The abstracts constitute no part of the record, and assigning errors on the abstracts cannot

be regarded as a compliance
with the rule which requires
the errors to be assigned on
the record

W. H. Wallace

for defts in error

The 1st Rule of this court, requires
the assignment of errors to be "written
on, or appended to the record" -

In this case neither was done

W. H. Wallace

for defts in error

1448 611
The People &c for the
use of Redman
vs

Wardlaw

Suggestions of
defts moved against
the motion to sustain
the order dismissing
writ of error

The People of the
 State of Illinois
 for the use of
 John Mc Kedge
 Pltff in Error

vs
 Assees. Mandamus
 Shepherd Moore &
 Robert W Moore

Supreme Court
 3d T. D.
 Error to Putnam

The Clerk of the above
 Court will please issue
 writs facias to hear Errors
 to Sheriff Putnam or to be
 served on the above named
 Defts

And attested
 W. P. Jenkins
 for Pltff

The People for men.
60 or ~~148~~
Andrew Wardlaw & others
- Recipe

Filed April 11, 1839
L. Leland
Clerk