

12299

No. _____

Supreme Court of Illinois

Bourlin, et al.

vs.

Hoyt & Green.

71641  7

III

Pierre Bourlier

97

Stephen Hoytetal

III

1856

12299

XX

fol 10

United States of America }
State of Illinois } ss.
County of Cook }

Shew before the honorable
John M. Wilson Judge of the Cook County
Court of Common Pleas at a regular term
of said Cook County Court of Common Pleas
within and for the County of Cook and State
of Illinois begun and holden at the Court
House in the City of Chicago in said County
and State on the second Monday being
the tenth day of September in the year
of Our Lord one thousand eight hundred
fifty five, and of the Independence of
the United States the Eighteenth.

Present the Honorable John M. Wilson Judge
Daniel M. Shoy Prosecuting Attorney
James Andrew Sheriff
Attest Walter Kimball Clerk

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Be it remembered that herefore to wit: on the
 first twenty Eighth day of August in the year
 of our Lord One thousand Eight Hundred
 and fifty six Came. Stephen Hoyt and
 George C. Green Plaintiffs, by Reynold Miller
 their attorney and filed in the Office of
 the Clerk of the Cook County Court of Com-
 mon Pleas, their security for costs and disburse-
 ments against Pierre Bonlieu James
 H. Carpenter & Julius White in a Plea a Debt
 which said security for costs and disburse-
 ments are in words and figures as follows
 to wit:

Stephen Hoyt
 George C. Green

Pierre Bonlieu
 James H. Carpenter
 &
 Julius White

Cook County Court
 of Common Pleas

We do hereby enter ourselves
 security for costs in this case and acknowledge
 ourselves bound to pay or cause to be paid all
 costs which may accrue in this action either
 to the opposite party or to any of the officers
 of this Court in pursuance of the laws of
 this State. — Dated this 23^d day

of August A.D. 1855

Moyn & Miller
Plff Attorneys

Stephen Hoyt
George C. Green
Jesse Bourlier
James H. Carpenter
Julius White

Cook County Court
of Common Pleas

That Clerk please issue
sums in the above entitled Cause to
Shff of Cook & Cook Counties in an
action of Debt to sum \$761.00 damage
\$1000 returnable at next term of Court

Moyn & Miller
Plff attys

And thereupon on the said twenty third
day of August in the year last aforesaid
there accordingly issued out of the office
of the Clerk of said Court writs of summons
which said writs are in words and figures
as follow to wit:

State of Illinois
County of Cook } SS

The People of the State of Illinois
To the Sheriff of said County - Greeting -

We command you that you summon Pierre Bon-
lin, James H. Carpenter & Julius White if they
shall be found in your County personally to
be and appear before the Cook County Court
of Common Pleas of said County on the first
day of the next term thereof to be holden at
the Court House in the City of Chicago in
said County on the second Monday of September
next to answer unto Stephen Koyst & George C.
Green in a plea that they render unto the
said Plaintiffs then Debt of seven hundred
& sixty one Dollars sixty cents which they
owe to and detain from them to the damage
of the said Plaintiffs as they say in the sum
of One Thousand Dollars -

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

Witness: Walter Kimball Clerk of my
said Court and the seal thereof at the
City of Chicago in said County this 23 day
of August A.D. 1855. Walter Kimball Clerk

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Endorsement on said summons
Served by reading the within named Julius
White the other defendants not found in my
County

August 31 1855

J. Andrew Shuff
Jr. St.orton Deputy

State of Illinois } ss
County of Cook }

The People of the State of Illinois
To the Sheriff of Cook County - Greeting -

We command you that you summon
Jerre Boulger, James H. Carpenter & Julius
White if they shall be found in your County
personally to be and appear before the Cook
County Court of Common Pleas of said County
on the first day after next term thereof to be
holden at the Court House in the City of
Chicago in said County on the second Monday
of September next to answer unto Stephen Hoyt
& George C. Green in a plea of Debt that they
render unto the said Plaintiffs their Debt of Seven
Hundred and Sixty one Dollars & Sixty cent
which they owe to and detain from them to
the damage of the said plaintiffs as they say
in the sum of one Thousand Dollars -

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

Witness- Walter Kimball Clerk
of our said Court, and the seal
thereof, at the City of Chicago in
said County this 23^d day of August
A.D. 1855

Walter Kimball
Clerk

Endorsement on the above writ.

I hereby certify that I have this
day served the within summons by reading
the same to the within named James H. Carpenter.

Dated Belvidere August 25. 1855

H. R. Wilson Sheriff.
Broom Co Ills

And afterwards to wit; on the thirty first day
of August in the year last aforesaid, comes
the said Plaintiff, and filed in the office
of the Clerk of said Court this Declaration
which said declaration is in words and
figures following to wit;

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State of Illinois } Cook County Court
Cook County } of Common Pleas

Stephen Hoyt and George
C. Green assignees of James Andrew Esq
Sheriff of the County of Cook according
to the form of the Statute in such cases made
and provided by Hoynes & Miller then attorneys
complain of Pierre Bomblie James H. Carpenter
and Julius White who were summoned
of a plea that they render to the said
Stephen Hoyt & George C. Green as assignees
as aforesaid the sum of One Thousand Dollars
of lawful money which they owe to and
unjustly detain from them —

For that whereas heretofore to wit;
on the twenty first day of December in the
year of our Lord One thousand Eight hundred
& fifty four — one Herman S. Messer the agent
of said Plaintiff and duly authorized for
that purpose, duly made and filed his
affidavit in the office of the Clerk of the Cook
County Court of Common Pleas setting forth
among other things that the said Pierre
Bomblie was indebted to the said Plaintiff
in the sum of seven hundred and thirty
nine Dollars and twenty-cents for goods
wares and Merchandise. heretofore sold

And delivered by the said Plaintiffs to the said Pierre Bomlin and that the said Pierre Bomlin was not resident of the state of Illinois but as he the said Hesse, believed had property in said state liable to attachment therein prayed that a writ of attachment might issue against the estate of the said Pierre Bomlin at the suit of the said Plaintiffs in pursuance of the Statute in such cases —

And the said Plaintiffs then & there to wit; on the day and year last aforesaid to wit at the County of Cook aforesaid caused to be filed with the clerk of said Court their Bond and J. Stockton White and George Hume their sureties as required by law in such case in the penal sum of fourteen hundred and seventy eight Dollars and forty cents and payable to the said Pierre Bomlin and conditioned for prosecuting said suit with effect by the said plaintiffs or in case of failure therein for paying and satisfying the said Pierre Bomlin all such debt in said suit and such damages as should be awarded against the said plaintiffs, their heirs Executors or administrators in any suit or suits which might thereafter be brought for wrongfully suing out the said attachment, and thereupon to wit; on the day and year

last aforesaid to wit: at the County of Cook
aforesaid the clerk of said Court duly issued
under the seal of said Court, a writ of attach-
ment directed to the Sheriff of the County of
Cook aforesaid and therein commanded the
said Sheriff that he attach so much of the
Estate real & personal of the said Pierre
Bomblin to be found in his County as should
be of value sufficient to satisfy said debt
and costs, and such estate so attached
in his hands to secure for so to provide that
the same might be liable to further proceed-
ings thereupon according to law at a term of
said Cook County Court of Common Pleas
to be holden at Chicago within and for the
County of Cook aforesaid on the first Mon-
day of February then next ensuing. So as
to compel the said Pierre Bomblin to appear
and answer the complaint of the said
Plaintiffs which said writ was made
returnable at the February Term of said
Court aforesaid which said attachment
writ afterwards and before the said return
thereof to wit: on the twenty first day of Decem-
ber in the year aforesaid to wit: at the County
of Cook aforesaid, was delivered to James
Anderson who then and from thence until and
at and after the time of the levy and execution

thereof and the making of the writing obligatory - hereinafter mentioned was sheriff of the said County of Cook in due form of law to be executed -

By virtue of which said writ the said James Andrew so being Sheriff as aforesaid and before the said return of the said writ to wit on the day and year last aforesaid and within his bailiwick as such Sheriff to wit at Chicago in the County of Cook aforesaid seized and attached fourteen Boxes of Wines one Box and contents one half Chest of Tea one Box and contents twenty four Boxes of Macaroni ten Barrels of Whiskey ten Barrels of oil one tierce of Oil four Quarter pipes of Brandy eleven Boxes of Merchandise eight large boxes of cigars and one Keg of wine - being the goods and chattles of the said Pierre Bourlin, and then and there had and detained the same as such Sheriff at the suit of the said plaintiff for the cause and purpose aforesaid and also then and there served said writ upon the said Pierre Bourlin the defendant thereby reading the same to him to wit on the day and year last aforesaid to wit at the County of Cook aforesaid and the said goods and chattles being so attached

and had and detained by the said
 James Andrew so being Sheriff as aforesaid
 by virtue of the said writ at the suit of
 the said Plaintiff the said defendants
 the said Pierre Bonlieu and James H-
 Carpenter and Julius White his co-defendants
 for the purpose of procuring a return of the
 said goods and chattels so attached as aforesaid
 and redeeming the same from such
 attachment afterwards and before the said
 return of said writ to wit on the day and
 year last aforesaid to wit at the County of
 Cook aforesaid, by then certain writing oblig-
 atory sealed with the respective seals of the
 said defendants and now shown to the
 Court here, the date whereof is the twenty
 eighth day of December Eighteen hundred
 and fifty four, acknowledged themselves
 to be held and firmly bound to the
 said James Andrew so being then Sheriff
 of the County of Cook aforesaid and to his
 successors in office, administrators and assigns
 by certain description and addition of James
 Andrew Sheriff of Cook County in the State
 of Illinois in the penal sum of one thousand
 Dollars lawful money of the United States
 for the payment of which sum they
 therein and thereby jointly and severally

bound themselves then here executed and
 administration in the and under a certain
 condition. Therefore, written that if the said
 defendants (the said Pierre Boulier the defen-
 dant in said attachment suit meaning) should
 pay the said plaintiffs the amount of the
 Judgment and costs which might be rendered
 against him in said suit (the said attach-
 ment suit meaning) within ninety days after
 such Judgment should be rendered, then
 the said obligation should be void otherwise
 should remain in full force and virtue as by
 the said writing obligatory and condition
 thereof reference being had there to will more
 fully and at large appear which said writing
 obligatory the said defendants then and
 there duly executed and delivered to the said
 James Anderson a sheriff as aforesaid to quit
 at the County of Cook aforesaid - whereupon
 said goods and chattels so taken as aforesaid
 and returned to the said Pierre Boulier in pur-
 suance of the Statute in such case made
 provided - And thereupon such proceedings
 were had in said suit that the said plaintiffs
 afterwards and in a final trial thereof - that
 is to say at the February term of said Court
 in the year of our Lord one thousand eight
 hundred and fifty five then holden at

the City of Chicago in the County of Cook
 aforesaid by the consideration and judgment
 of said court recovered in said suit against
 the said Pierre Bomlier the sum of seven hun-
 dred sixty one dollars & sixty cents for their
 damages which they had sustained as well
 as on occasion of not performing certain promises
 and undertakings then lately made by the
 said Pierre Bomlier to the said Plaintiffs as
 for the costs and charges by them about their
 said suit in that behalf expended when of
 the said Pierre Bomlier was convicted as by
 the record & proceedings thereof still remaining
 in said court more fully appears —

And the said Plaintiffs in fact say that
 the said Pierre Bomlier did not pay to the said
 plaintiffs the amount of said judgment and
 costs, so recovered as aforesaid within ninety
 days after the rendition thereof — nor hath he
 or any one for him since or at any other time
 paid the same or any part thereof according
 to the form and effect of the said condition
 of the said writing obligatory but wholly neg-
 lected and refused and still doth neglect
 and refuse so to do whereby the said writing
 obligatory became forfeited and the said
 plaintiffs further say that the said writing
 obligatory being so forfeited and the money

therein specified remaining unpaid and
 unsatisfied to the said Sheriff by the said
 James Andrus so being Sheriff of the said
 County of Cook afterwards to wit; on the twenty
 third day of August to wit; at the County
 of Cook aforesaid, at the request and cost
 of the said plaintiffs - the plaintiffs in
 said suit by an endorsement on the said
 writing obligatory made and attested in the
 presence of and attested by two credible witnesses
 under his hand assigned the said writing
 obligatory to the said plaintiffs according to the
 form of the Statute in such case made
 and provided as by the same assignment
 endorsed on the same writing obligatory as
 aforesaid and the court now here shown
 the date whereof is the day and year last
 aforesaid may more fully appear. By means
 whereof and by form of the Statute in such
 cases made and provided an action hath
 accrued to the said plaintiffs as assignees
 of the said James Andrus so being Sheriff
 as aforesaid to demand and have of and
 from the said defendants the said sum
 of One Thousand Dollars above demanded
 Yet the said defendants although often
 requested so to do have not as yet paid
 the said sum of One Thousand Dollars

above demanded or any part thereof to the said James Andrew before the said assignment or to the said Plaintiffs assignees as aforesaid or either of them since the said assignment but have hitherto wholly neglected refused so to do and still do neglect and refuse to pay the same or any part thereof to the said Plaintiffs assignees as aforesaid to the damage of the said Plaintiffs of one thousand Dollars and therefore they bring this suit &c

Wm. H. Miller
Att'y

Copy of Bond declared on

Know all men by these presents that we Pierre Bonlieu James H. Carpenter & Julius White are held & firmly bound unto James Andrew Sheriff of Cook County in the State of Illinois and to his successors in office executors, administrators assigns in the penal sum of one thousand Dollars lawful money of the United States for the payment of which sum we hereby jointly severally bind ourselves our heirs executors & administrators

Witness our hand & seals this twenty

eighth day of December eighteen hundred
 and fifty four - The condition of this oblig-
 ation is such that whereas on the twenty first
 day of December eighteen hundred fifty
 four a certain writ of attachment issued out of
 the Cook County Court of Common Pleas of
 the said County of Cook at the suit of Step-
 hen Hoyt. George C. Green. Plaintiffs against
 the Estate of Pierre Boulton Defendant
 directed to the Sheriff of Cook County to execute
 by virtue of which said writ the said Sheriff
 by John A. Norton Deputy has attached the
 following described property to wit: 14 Boxes
 of Wine 1 Box & contents 1 half Chest Tea 1 Box
 & contents 24. Boxes Macaroni 10 Barrels of
 Whiskey 2 Bbls of oil. 1 Siver of oil. 4
 Quarts paper of Brandy 11 Boxes Merchandise
 & large Boxes Cigars & 1 Keg of Wine -

And said
 Defendant being desirous of releasing said
 property from such attachment -

- And if the said defendant
 shall pay the said plaintiff the amount
 of the Judgment Cost which may be
 rendered against him in the said suit on
 a final trial within ninety days after
 such Judgment shall be rendered
 then this obligation to be null otherwise

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to remain in full force and effect -

Pierre Bonlieu Esq
By Emile Bonlieu atty in fact
J. H. Carpenter Esq
Julius White Esq

Endorsement

The within Bond having been forfeited I
do hereby assign the same to Stephen Hoyt
and George C. Green the Plaintiffs in the
attachment suit within named -

Witness my hand this 28th day of August
A.D. 1855.

Henry G. Miller
John H. Batten

James Andrew
Shiff

Said afterwards to wit: on the twelfth day of
September in the year of our Lord one thousand
eight hundred and fifty five. Said day
being one of the days of the September term
of said Cook County Court of Common Pleas
the following among other proceedings were
had in said cause and entered of record
to wit:

Stephen Hoyt & George C. Green

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Pierre Bourlier James H. Carpenter & Julius White } Debt

And now come the said plaintiffs by Hoyne & Miller their attorneys and due personal service of process of summons issued in this cause having been had on the said defendants James H. Carpenter and Julius White only, and they being three times severally solemnly called in open Court come not nor does any person for them or either of them, but herein they make default which is on motion of said plaintiffs ordered to be taken and entered of record. Wherefore the said plaintiffs ought to have and recover of the said defendants James H. Carpenter and Julius White implicated with the said Pierre Bourlier their debt in their said declaration mentioned and also their damages sustained by occasion of the premises, and the Court after hearing the allegations and proofs submitted by said plaintiffs being now fully advised in the premises finds the said defendants indebted to and owing said Plaintiffs the sum of One Thousand Dollars debt

and the Court assessed said ^{Plaintiffs} damages by occasion of the premises to the sum of Seven hundred and eighty one dollar and ninety six cents —

Therefore it is considered that the said plaintiffs do have and recover of the said defendants James H Carpenter and Rufus White impleaded as aforesaid their Debt of One Thousand Dollars and also their damages of seven hundred and eighty one Dollar and ninety six cents in form aforesaid. by the Court here assessed and also their costs and charges by them in this behalf expended and have execution therefor with an order thereon endorsed that said debt be discharged on payment of the damages aforesaid interest and cost —

And afterwards to wit, on the eighth day of October in the year. Eighteen hundred and fifty five. said day being yet one of the days of the September Term of said Court the following further proceedings were had in said cause and entered of Record to wit,

Stephen Hoyt & George C. Green }
 v } Debt
 Chas. Bonlieu James H.
 Carpenter and Julius White }

And now come the said defend-
 ant by. Farnsworth & Conger their attorneys and
 enter their motion herein to set aside the default
 and judgment entered in this cause and
 thereupon comes the said plaintiffs by their
 said attorneys and the court after hearing
 said motion being now fully advised in the
 premises. Overrules said motion to which dec-
 ision of the court the said defendants
 enter their exceptions. And pray an appeal
 to the Supreme Court which is allowed by
 the court on their filing appeal Bonds in
 the usual conditions with Albert Keeley as
 Surety in the sum of Twelve hundred
 Dollars and that they file said bond and
 their bill of exceptions herein within thirty
 days from this day —

And thereafter to wit; on the thirth day of November in the year last aforesaid there was filed in the office of the Clerk of said Court and Appeal Bond which said Bond is in words and figures as follows to wit;

Know all men by these presents that we James H. Carpenter & Julius White as principals and Albert Stuby as their surety of Chicago Illinois are held and firmly bound unto Stephen Hoyt & George C. Greene in the penal sum of twelve hundred dollars for the payment of which well & truly to be made unto the said Hoyt & Greene their heirs executors administrators or assigns we do bind ourselves our heirs executors and administrators jointly severally & firmly by these presents —

Signed Sealed & dated this 22^d day of October A.D. 1855 —

The condition of this obligation is such that whereas the said Hoyt & Greene in a certain suit pending in the Cook County Court of Common Pleas. did receive a Judgment on the 12th day of September A.D. 1855 at the September term of said Court there being held in & for said County against the said James H. Carpenter and

Julius White impleaded with Pierre Bon
lie for Debt one Thousand Dollars damages
seven hundred and ~~ninety~~ six eighty one
Dollars and ninety six cents & costs of suit
to be satisfied on payment of said Damages
and costs - From which Judgment the
said James H. Carpenter & Julius White
hath prayed an appeal to the Supreme
Court of the State of Illinois, which hath
been allowed by said Cook County Court
of Common Pleas on filing bond as by
said Court directed -

Now therefore the condition of
this bond is such that if the said James
H. Carpenter & Julius White shall prosecute
his appeal with effect & without delay &
shall pay all Judgment's costs interest
& damages in case the said Judgment
be affirmed then the above bond to be
void, otherwise to remain in full force

J. H. Carpenter 
 Albert Seely 
 Julius White 

State of Illinois
County of Cook } S. J.

I Walter Kimball Clerk of the Cook County Court of Common Pleas within & for said County State do hereby certify that the foregoing is a full true and correct transcript of all the papers on file, and also of the Orders entered of Record in said Court, in the case of Stephen Hoyt & George C. Green plaintiffs and Pierre Brunier James H. Carpenter & Julius White defendants.

And Testimony Whereof I have hereunto
Set my Hand & affixed the Seal of
Said Court at Chicago in said County
this 15 day of May A.D. 1856
Walter Kimball Clerk

In the Supreme Court
of the State of Illinois for
3rd Grand Division
of June Term A.D. 1856

James H. Carpenter
Julius White impl.
vs
Pierre Brunier appts.

Stephen Hoyt & George
C. Green appellus

Appeal from
Cook County Court.

And now comes the

100
200
said appellants and by Faneurth &
Burgess their Attorneys & say that in the
recent proceedings & judgment afore-
said there is manifest and material
error appearing & errors therein in
that the said claim is a debt
of \$761⁰⁰ while the judgment is for
one thousand dollars.

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That the declaration upon its
face is insufficient in law & shows no
legal right in said Appellants to recover
thereon.

That the said bond set out in
said Narr. is void, being taken color
officii & not according to the Statute
in such cases made & provided.

That the Court below should
have granted the motion & set
the default & set aside the judg-
ment below.

Wherefore for other errors
manifest & material they pray that
the judgment may be reversed & they
motion &

Faneurth & Burgess
for Appellants

James H. Carpenter
Julius White, impleaded
with Boulton.
Appellants
vs
Hoyt & Green -
appellees

} Supreme Court
State of Illinois

June Term 1856

We do hereby enter ourselves
security for costs in this cause
and acknowledge ourselves bound
to pay or cause to be paid all costs
which may accrue in said action
either to the opposite party or to
any of the officers of this Court
in pursuance of the laws of
this State

Dated Ottawa June 23^d 1856

Garnsworthy & Burpee

Carpenter, White
Le - us
May A & Green

See for costs

Filed June 29, 1856
L. Seland
Clerk

Stephen Hoyt &
George C. Green

vs

Pierre Bonlieu et al

Filed for record

J. L. Kane

Clerk

Fees for Transcript
paid by deft atty of \$5.00
W. H. H. W. C. C.

Supreme Court of Illinois.

Stephen Hoyt, et al
appellus

June Term. 7th 1854

vs
James W. Carpenter
appellant.

And now comes the
said appellus by Hogue & Miller their attorneys and to
the errors assigned by said appellants. Say that no
such errors appear in the record proceedings and
judgments affirmed as by said appellants is alleged
and prays that said judgments be affirmed -
Hogue & Miller
for appellus.

Carpenter & White
(Nephews) with Pauline
Hoyt & Green

There can be no doubt that if there was no Statute for the assignment of one of these bonds, they would not be assignable.

Now the Statute only provides for the assignment of a forthcoming bond, not a bond (like this one) for the payment of the Judgment.

The words "like bond" used in the Statute simply means a bond to the Sheriff, sufficient &c. but it would be too great a stretch of construction, to say that the words "like bond" had any thing to do with the manner of giving it.

If we are right in the above, then the bond in this case was not assignable so as to authorize the assignee to bring suit upon it in his own name —

Samuel H. Burgess

On the other question, the Court will see that the sum only claimed Debt \$761.⁶⁰ Whereas the Judgment is Debt \$1000 — Damages \$781.⁰⁰

We think this could be taken advantage of by motion, in arrest, or to set aside the Judgment — If so it is error

G. & B. —

Carpenter & White
2c.

us

Hay & Green

ppp points

Filed June 25, 1854
L. Leland
Clerk

Sup court

Bowlin Carpenter
& White

111

us
Hoyt & Green

This case is on
part of Off submitted to the court
on written arguments & the filed

Fairweather & Son
for App'ts. of

Bourlin et al vs Hoyt et al

Filed June 27, 1856
L. Leland
Clerk.

Supreme Court, of Illinois

JAMES H. COMPTON
Plaintiff in Error

vs.
STEPHEN WAGT. GEORGE C.
GUM.

It is too late after judgment to urge the
objection contained in the first error assigned.
The variance between the amount claimed
in the writ - and the sum for which judgment
was rendered - The payment follows the au-
thorization. This objection should have been
raised by plea in abatement.

Prince vs. Lamb. Bruce 298

Ducat vs. Craig 2 Wheat 45

Garland vs. Lechatter 12 Idem 430.

Johnson vs. Kimball 11 Wheat 280

Crunkshank vs. Barron & Gile 79 -

Midd vs. Hubbard 11 Idem 574 -

It will be noticed that the recovery in this
case does not exceed the amount in the
old common claim of the writ. It being
\$1000. then - and the amount & debt do not
do not exceed the debt, ~~and~~ damages stated in
the writ. Adding interest -

The only question in the case is that raised
by the second error assigned. Whether the
action should not have been brought in
the name of the Sheriff. instead of in the
name of the plaintiffs.

This action is brought upon a bond granted
under the 29th sec. of Chap 9. of Rev. Statutes

by the defendant Bowler, rather to procure
a return of property attached at the instance
of the plaintiffs creditors of Bowler -

The bond is in the full sum of One thousand
dollars payable to the Sheriff his Successors

Executors administrators and assigns and is
conditioned for payment to the plaintiff of the
amount of the judgment and costs which
might be recovered in the attachment suit.

In Sec. 9. of the same Statute. - The Sheriff is re-
quired to retain the custody and possession
of the property, unless the person, in whose
possession it shall be found shall enter into
bond and security - to the Sheriff - conditional
that the property shall be forthcoming to answer
the judgment &c - Sec. 10. provides that if the
bond shall be forfeited the plaintiff may assign
the bond to the plaintiff in the attachment,
after which the plaintiff may bring a writ
upon the in his own name. The same section
provides a remedy for the plaintiff in case
the security taken is insufficient.

Now the 29th section says, that the defendant,
desiring a return of the property, may at his
option instead of the bond required in
the 9th section, give like bond and security,
in a sum sufficient &c. - conditional
that the defendant, will pay the plain-
tiff the amount of the judgment and costs
which may be recovered against him on
a final trial - It seems to us clear that
the legislature intended to connect the
29th with the 9th section of the Statute. -

and to provide the defendant with an
alternative remedy by which in the one
instance he can retain the possession of
his property, and in the other to relieve
it entirely from the operation of the attach-
ment writ, and it leaves it optional with
him which of these courses he will take,
and in either case he must give a like
a ~~similar~~ bond and security, that is a
bond and security to the officer in both
instances, in double the value of the property
in the one case, and in the other sufficient
to cover the debt and charges there to.
and conditional in the one case for the
forthcoming of the property to answer the judg-
ment and in the other to pay the judgment
and costs. The legislature further intended
to give the plaintiff the most effectual
security out of the property attached for the
payment of his debt - without subjecting the
defendant to any unnecessary embarrass-
ment - This it seems to us to be the only
object ^{intended} ~~designed~~ by the legislature by the two
sections cited - and to render the plaintiff's
remedy more secure and more completely
under his control - and to relieve the sheriff
from any further responsibility in the
matter - in case he has taken sufficient
security. It is provided in Section 19, -
that in case the bond is forfeited the
sheriff may assign the bond to the plai-
ntiff - and the plaintiff may, being a dis-
tresser in his own name - but if the
plaintiff will not accept the Bond taken
by the sheriff and it shall be adjudged in
supremacy by the court - the liability of

The Sheriff continues until good and
sufficient security shall be given - and
he is liable to the same payments and
recovery as if he had been made cap-
sant in the attachments - By construe-
ing then three several sections together
(and they are parts of the same act.)
The plaintiff is secure there is secured
to the plaintiff every advantage he
acquires by the law of his writ, and at
the same time the defendant is not un-
necessarily embarrassed by it - But if
they are not construed together and the
10th section is to be considered as referring
solely to the 9th section of the Statute, and to
the bond mentioned in that section then
the plaintiff has no remedy in case the Sheriff
takes an insufficient bond under the 29th
section although it is provided by that sec-
tion that in case a bond is given the attach-
ment shall be dissolved and the property taken
shall be restored, - If the Legislature
intended that the bond taken under the
29th section should not be exigible as proof
and in the 10th section the condition would
not have been to pay to the plaintiff the amount
of the judgments & costs, but to pay to the
Sheriff for the use of the plaintiff the amount
of the judgments & costs. - By the expression
"like bond and security instead of the bond re-
quired by the 9th section" they must have
intended a bond subject to the same proceeding
in case of forfeiture, or then provided for in
case of a forfeiture of ~~the~~ a bond executed under
the 9th section - for the remedy provided by
the 10th section is as necessary in the case

can as in the other—

That the bond in this case is assignable under
the 4th section concerning negotiable instru-
ments.—

By the bond the defendants acknowledge
themselves bound and they thereby agree to pay
the sum of one thousand dollars to the Sheriff
his successors in office Executors administrators
and assigns. The sum of \$1000. is therefore by
the terms of the bond due and payable to
the Sheriff — and is made assignable by the
4th section of the Statute so as to entitle the assignee
a right of action. — The condition which is
in fact, no part of the bond, but a performance
of which can be set up as a defense to prevent
a recovery of damages in an action upon the
bond, is for the payment of the amount
of the judgment in money to the plaintiff —

Coyne & Miller
for appellants—

(111)
Supreme Court of Illinois
"

Wright & Mason
att

P. Boudier Carpenter et
al

Appellus Argument
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Filed June 21, 1836.
L. Leland
Clerk

Wright & Mason
for appellus