No. 13015

Supreme Court of Illinois

Bloom

---

vs.

Crane et al

71641 

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION.

APRIL TERM, 1860.

GARSON BLOOM
vs.
J. L. CRANE *et al.* } *Appeal from Cook.*

POINTS FOR APPELLANT.

The only question in this case is one of fact.

Appellant brought his action of trespass *vs.* appellees for taking $3,000 worth of clothing. Appellees justify the taking, under a writ of attachment against the goods, &c., of one Bennett, alleging the goods to have been said Bennett's.

On the trial, the evidence showed that *all* the goods were the property of appellees, and had been for a long time prior to the taking, and it did show absolutely that some $500 worth of the clothing had never belonged to Bennett at all.

Deposition of Alexander, page 3 of Abstract, Int. 9.

2. No writ of attachment was introduced or offered in evidence by appellees; nothing but the return was in evidence.

Abstract, page five.

Therefore, if the goods have been shown to be the property of Bennett, the plea of appellees would not have been sustained.

3. It clearly appearing that plaintiff had possession of the goods; that they were taken by defendant; and no right being shown by defendant to take them, the case necessarily is for the plaintiff.

GLOVER, COOK & CAMPBELL,
Attorneys for Appellant.

Bloom
vs
Crane

Points for Appellant

1301

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GLOVER, COOK & CAMPBELL,
Attorneys for Appellant.

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GLOVER, COOK & CAMPBELL,
Attorneys for Appellant.

Bloom
vs
Goode et al.

Points for appellant

STATE OF ILLINOIS, SUPREME COURT,

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GLOVER, COOK & CAMPBELL,
Attorneys for Appellant.

Bloom
vs
Crane

Points for Appellant

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GLOVER, COOK & CAMPBELL,
Attorneys for Appellant.

Bloom
vs
Crane

Points for Appellant-

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GLOVER, COOK & CAMPBELL,
Attorneys for Appellant.

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Bloom
vs
Crane

Points for Appellant.

STATE OF ILLINOIS, SUPREME COURT,

THIRD GRAND DIVISION,

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GLOVER, COOK & CAMPBELL,
Attorneys for Appellant.

Bloom
vs
Crone

Points for Appellant—

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GLOVER, COOK & CAMPBELL,
Attorneys for Appellant.

Bloom
vs
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Points for Appellant

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

SUPREME COURT OF ILLINOIS.

APRIL TERM, A. D. 1860.

GARSON BLOOM

vs.

JAMES L. CRANE ET AL.

ABSTRACT OF RECORD.

Upon the 25th day of June, 1858, the plaintiff filed in the Cook County Court of Common Pleas, his declaration in trespass, in two counts.

First—"quare clausum fregit," with "gravamen," the carrying away and conversion of 200 overcoats, 200 frock coats, 200 business coats, 300 vests, 500 pairs of pants, 50 India rubber coats, 500 hats, 500 caps, 20 trunks, 1000 shirts, 100 over-shirts, 100 pairs of over-alls, 50 guernsey frocks, 100 cravats, 100 pairs of suspenders, 100 pocket handkerchiefs, 1000 pairs of stockings, 100 pairs of gloves, 100 pairs of mittens, and 200 pairs of drawers.

Second—trespass for taking and carrying away the same number and value and description of goods in first count.

And on the 6th day of July, 1858, the defendants file pleas—

First—General issue.

Second—Plead property in the goods in the declaration in one Israel Bennett, and justify the taking complained of under a writ of attachment issued out of Cook County Court of Common Pleas, in favor of said Cranes and against said Bennett, and that said Dart was at the time of the taking a deputy sheriff and empowered to serve said writ.

And upon the 17th day of December, 1858, the plaintiff joined in the general issue aforesaid of the said defendants, and filed replication to their general plea, denying property in said Bennett and reaffirming property in plaintiff, and concluding to the country, &c., in which the said defendants the same day joined.

And the case being thus at issue, was upon a day in the September Term of said Court called for trial, and the plaintiff to maintain the issue upon his side offered the following testimony:

First. The deposition of Nathan Alexander, in the words and figures to wit:

Int. 1*st.* What is your name, age, residence and business?

Ans. My name is Nathan Alexander; my age is twenty-eight years; I reside in the village of Elmira, Chemung county, and State of New York; am engaged as a clerk in the business of ready made clothing.

Int. 2*d.* Where did you reside upon the 19th day of November, 1856, and what was your business at that time?

Ans. I resided upon the 19th day of November, 1856, in the city of Chicago. My business was then a clerk for Garson Bloom, the plaintiff in this action.

Int. 3*d.* Do you know the parties to this suit, or any of them? if yea, which of them, and how long have you known them?

Ans. I know the parties to this suit, James L. Crane, Garson Bloom, Isaac A. Crane and John H. Dart; have known the plaintiff about one year and a half; have known the defendants about three years.

Int. 4*th.* What was the business of the plaintiff on the 19th day of November, 1856?

Ans. On the 19th day of November, 1856, the plaintiff was engaged in the business of selling ready made clothing.

Int. 5*th.* Where was the store of the plaintiff situated?

Ans. The store was situated on North Clark street, No. 20, in the city of Chicago.

Int. 6*th.* If you answer to the 2d Interrogatory that you were clerk for the plaintiff, state whether you were familiar with the stock of goods of the plaintiff, and state fully your means of being acquainted with the same.

Ans. I was familiar with the stock of goods of the plaintiff. I had the whole charge of the stock while I was the clerk for plaintiff, and closely examined the stock while I was such clerk, at different times.

Int. 7th. Did you ever see any of the defendants at the aforesaid store of the plaintiff, and if yea, state which of the defendants, when you saw them, and what they did at the plaintiff's store, what they said, and what you said to them.

Ans. I have seen the defendants at the plaintiff's store aforesaid. I saw James L. Crane and John H. Dart there on the 19th day of November, 1856. They closed up the plaintiff's store by taking the possession thereof and the goods therein, and locking up the store. They said they had a writ of attachment against one Israel Bennett, and must shut up the store. I told them that the store belonged to the plaintiff. James L. Crane then said that it did not make any difference who owned the store, we are going to close it up.. They then shut up the store and took possession of the goods.

Int. 8th. What was the value of said stock of goods of the plaintiff upon the 19th day of November, 1856, and what was your means of knowing the value of said goods?

Ans. The stock of goods of the plaintiff on the 19th day of November, 1856, was three thousand dollars. My means of knowing the value was my familiar acquaintance with the stock of goods, and by making an inventory thereof a short time previous to the 19th day of November, 1856, of each article in the store.

Int. 9th. Did you ever purchase any goods of any persons for Mr. Bloom, the plaintiff? if yea, of whom, and when, and how much?

Ans. I have purchased goods for the plaintiff of Leopold & Goodheart, and some at auction in Chicago; bought of Leopold & Goodheart and at auction about the 10th day of November, 1856, goods to the amount of $450, including what I bought at auction.

Int. 10th. Where was the plaintiff upon the 19th day of November, 1856?

Ans. The plaintiff was away from home at the time—don't know where he was?

Int. 11th. Did you help to take an inventory of said stock of goods at any time? and if yea, when, and what was the amount of such inventory?

Ans. I helped to take an inventory of the stock about the 5th day of November, 1856; it amounted to from $2800 to $2900.

Int. 12th. Was the said stock more or less valuable on the 19th day of November, 1856, than when you took such inventory? and how much more or how much less?

Ans. The stock was worth about the same on the 19th day of November, 1856, as when the inventory was taken.

Int. 13*th.* Do you know any other matter or thing which would be of use to the plaintiff touching the matters in controversy, and if so, state the same fully and particularly, in answer to this interrogatory.

Ans. I don't know of anything more.

CROSS-INTERROGATORIES AND ANSWERS THERETO BY THE WITNESS ON THE PART OF DEFENDANT.

Cross Int. 1*st.* State whether or not you are a Jew, and whether you are an Israelite by descent or not.

Ans. I am a Jew and an Israelite by descent.

Cross Int. 2*d.* If in answer to the above interrogatory you say you are a Jew or Israelite, state whether or not you were sworn at the time your deposition was being taken herein with your hat on or with your head uncovered, and state whether you consider an oath binding upon a Jew if sworn with the head uncovered.

Ans. I was sworn with my hat off and head uncovered, and I consider an oath binding upon a Jew if sworn with the head uncovered.

Cross Int. 3*d.* State whose sign was upon the store mentioned in your answer to the 5th direct interrogatory, on the 19th day of November, A. D. 1856, and whether or not the name of Israel Bennett was on such sign at that time.

Ans. There was no sign upon the store, at the time mentioned, of any person.

Cross Int. 4*th.* State whether Israel Bennett was present or about said store on said 19th day of November, 1856, or not.

Ans. He was not present or about the store at the time mentioned.

(Signed,) NATHAN ALEXANDER.

And also introduced the testimony of a certain witness named Joseph N. Barker, who testified as follows, to wit:

"I know the parties to this action. Sometime in November, 1856, I went to the store of Crane Brothers on Water street in the city of Chicago, with a writ of replevin in favor of the plaintiff for goods mentioned therein. I saw the defendant James L. Crane, and demanded the goods of him. He said they [Crane Brothers] had the goods which were taken from Bloom upon their attachment writ against Bennett, but would not give them up nor tell where they were.

I heard the defendants Morse and Butler testify upon a former trial of this matter. They testified that they helped take the inventory of the goods attached.

CROSS EXAMINED.

I used to be a law partner of Mr. Hyatt, and as such was counsel in this case. Bloom was Hyatt's client, and Hyatt had charge of the case. I have withdrawn my appearance in the case and am no longer counsel. I cannot tell whether Morse and Butler testified that they took the inventory referred to in Bloom's store or not. I was present at the trial of the former suit for this same matter, which suit was dismissed after trial. Mr. Hyatt said he dismissed in order to hold defendants to bail, the Cranes having failed since the suit was commenced. He did not say that he dismissed to make Morse and Butler parties to a new suit. I did hear him say before he commenced this suit that he should join Morse and Butler. I did not hear him say that he dismissed the suit because one of the plaintiff's witnesses appeared so bad. I don't think Mr. Hyatt called that witness a liar, but he called him something and told him to go down from the stand. He then went on with the trial. He did not dismiss the suit until the testimony was all in on both sides."

The plaintiff also introduced the return to the writ of attachment referred to by the witness Barker, which return was in the words and figures following, to wit:

"By virtue of the within writ of attachment, I have levied upon the goods and chattels mentioned and described in schedule annexed and marked C, the 17th day of November, 1856.

Fees.—1 Levy..... .50
1 Mile..... .05
1 Return..... .10—65

JAMES S. BEACH,
Coroner and Acting Sheriff.
By JOHN H. DART, Deputy.

Served by reading to the within named Israel Bennett, the 26th day of Nov., 1856.

Fees.—Service..... .50
1 Mile..... .05—55

JOHN L. WILSON, Sheriff.
By JOHN H. DART, Deputy.

Schedule C referred to in the foregoing returns.

76 over coats, 162 assorted coats, 201 assorted vests, 212 pr pants, 12 I. R. lustre coats, 14 pr do pants, 5 rubber coats, 11 rubber hats and caps, 5 oil coats, 2 oil bags, 3 carpet do, 3 trunks, 1 doz. overalls, $4\frac{1}{2}$ doz. flannel shirts, $\frac{10}{12}$ doz. hickory do, $\frac{7}{12}$ doz striped do, $1\frac{1}{6}$ gurnsey frocks, $1\frac{1}{2}$ doz. canvas pants, $1\frac{1}{2}$ doz. denim frocks, $16\frac{10}{12}$ doz. shirts, $4\frac{5}{12}$ doz. cravats, tabs and knots, $\frac{3}{4}$ doz. suspenders, $2\frac{1}{6}$ doz. hdkfs, $3\frac{5}{12}$ half hose, $3\frac{1}{4}$ doz. gloves, 1 doz. wristlets, $3\frac{1}{3}$ doz. mits, 13 tippets, and tabs, 1 umbrella, $2\frac{1}{4}$ doz. hats and caps, $7\frac{11}{12}$ doz. pairs of drawers.

And the plaintiff then rested, and the defendants to maintain the issue upon their part, introduced the testimony of a certain witness named Hamilton B. Bogue, who testified as follows:

"I am a clerk of the American Express Company. Know J. L. Crane, Bros. & Co. Knew them on the 19th day of November, 1856; did not know Bloom; knew Bennett had stores on North Clark street and Lake street.

Was clerk of Crane, Bros. & Co. in Feb'y, 1856, and continued there one year as book keeper.

Israel Bennett was buying goods during that time frequently; has bought goods to North Clark street. I recollect two bills to go there, about $300 each; this was in Oct., 1856, one bill the 28th of October, $288.66, delivered to North Clark street. He paid often. Israel Bennett and son said they wanted the goods mainly for their North Clark street store; goods went there. Bought a great many goods there of the defendants; some years as high as $3000. Never saw Bloom there. Attachment issued November 27th, 1856; was never in No. 20 North Clark street; knew where it was.

Cross-Examined.

It was not my business to deliver goods. I never did deliver any to any body. I never went with draymen to deliver goods; never saw any goods delivered except such as were delivered to purchasers at the store. I have said I was never at No. 20 North Clark street, never saw any goods delivered there, don't know as any of the goods bought by Bennett ever went there. Knew nothing of Bennett's affairs except what he told me. Bennett had several stores in the city. I don't know how many. I have said Bennett bought a great quantity of goods of defendants; said as high as $3,000 per annum. Goods were sent just where Bennett directed them; sometimes to one place and sometimes to another.

And the defendants here rested.

The plaintiff to further maintain the issue upon his part, introduced the testimony of another witness named Charles Myer, who testified as follows:

I lived on Kinzie street, on the north side, in 1856, owned No. 20 Clark street, and leased it to Bloom about the middle of April, 1856; he took possession on the first of May; he brought in goods and commenced a clothing store; he lived up stairs; he occupied the store until the middle of November, 1856.

Cross-Examined.

I gave him a lease; never got rent from Bennett. He came along with Bloom when he rented the store; cannot tell whether it was the first time that Bloom came that they came together. Bennett was along when the bargain was made.

Which was all the evidence submitted to the jury, who after hearing the same found a verdict for the defendants, whereupon the plaintiff moved the Court for a new trial of said cause upon the ground that the verdict was against evidence, which motion the Court overruled and entered judgment upon verdict, from which judgment the plaintiff prayed an appeal, which was allowed.

The error assigned is the refusal of the Court to grant a new trial upon the motion.

L. H. HYATT,
Plaintiff's Attorney.

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Supreme Court

Garson Bloom

vs

J. L. Crane. et. als

Abstract of Record

13016

Filed May 16. 1860
L. Leland
Clerk

13015

L. H. Hyatt
Attys Atty

STATE OF ILLINOIS, SUPREME COURT. } THIRD GRAND DIVISION. APRIL TERM, A. D. 1860.

SAMUEL B. BUCKLEY. vs. EDWIN D. LAMPETT } *Error to Tazewell.*

Abstract of the Record.

This was an action of trespass, brought by Lampett against Buckley, a constable of Tazewell county, for taking one grey horse, one two-horse wagon, and set double harness, which he had levied upon by virtue of an execution in favor of Hamilton & Dugger against William Fields. The case was tried at the February term, 1860, of Tazewell circuit court, before Harriott, judge, a jury being waived by parties.

Page of Record.

1 Precipe for summons.

2 Summons, dated twenty-third of January, 1860, and sheriff's return thereon.

3 Declaration, charging defendant with taking one grey horse, one two-horse wagon, and one double harness, the property of plaintiff.

4 Proceedings at February term, A. D. 1860.

5 1st. Plea of not guilty.

2d. Plea avowing the taking of the said grey horse, one two-horse wagon, and said double harness, as constable of Tazewell county, by virtue of an execution in favor of Hamilton & Dugger, for $73 67 debt, and $10 03 costs, and against William Fields; which execution came to the hands of defendant on the 24th of December, 1859; and that the said horse, wagon, and harness were the property of said William Fields, and not the property of said plaintiff.

7 The plaintiff's replication, that the said grey horse and one double harness in the declaration mentioned are the property of plaintiff, and not the property of said William Fields.

8 Issue joined.

8 Affidavit for security for costs.

9 Security bond.

10 Trial. Jury waived. Judgment for plaintiff for $300.

11 Motion for new trial. Overruled. Prayer of appeal. Bond to be filed in thirty days, T. N. Gill as security.

12 Bill of exceptions setting out all the evidence.

Plaintiff offered a chattel mortgage, dated April 28, 1859, from William Fields to Thomas C. Reeves, for one dark bay horse, seven years old; one grey horse, eight years old; one two-horse wagon and one set double harness, conditioned that, if said Fields should pay said Reeves for the redemption of said property, $300, on or before first of January, 1860, according to tenor and effect of a note, then the mortgage was to be void. Said Fields was to retain the possession.

15 Plaintiff called Alexander Orr, who testified that he knew the horse in controversy. The horse, wagon, and harness were levied upon and taken by the defendant on the twenty-first of January, 1860. The horse was taken to Gill's office. The horse and harness were in the stable of plaintiff at the time the levy was made. The stable was not on Fields' lot or premises. The plaintiff lives with William Fields. Fields is plaintiff's step-father. Plaintiff has been driving and using the team since midsummer. The horses had been kept in stable where they were taken by defendant, ever since in October, 1859. Plaintiff had possession of it when the levy was made.

16 Plaintiff then called William Fields, who testified that he knew the property in controversy. The property belonged to plaintiff on the twenty-first of January, 1860, and had since some time in the early part of the summer of 1859. Witness never owned the horse; he had owned the wagon the whole time, and sold to plaintiff in the summer of 1859. Plaintiff was to pay witness $75, and pay off mortgage for team. I traded another wagon for the one in question, and Thomas C. Reeves paid $50 difference for me. The plaintiff's mother bought the horse of Thomas C. Reeves last spring. I am the husband of the mother of plaintiff. I gave the mortgage, which has been read, to Thomas C. Reeves. The debt for which it was given was never paid. The mortgage was closed by Reeves. The horses, wagon, and harness were away when the mortgage became due. Plaintiff took them off that day and did not return with them until after night. As soon as the horses came back the mortgage was closed. The property was sold by Flory under the mortgage.

On cross-examination, witness stated, that he never owned the horse. Plaintiff's mother bought the horse for him. I gave my note for $350, and the mortgage to secure the same. The price of the horse was included in the $350 note; the horse was $175, and the balance of the $350 I owed Reeves. The horse was in possession of plaintiff while the mortgage was on the same. Plaintiff is my step-son. He lived with me. Plaintiff rented the stable in which the horse was kept of Joseph Bequith; it was not in my possession or on my premises.

I traded the wagon to the plaintiff about one year ago this spring. On the second of January, the team was over the Mackinaw, distant about seven miles. It was taken away by plaintiff on the morning of January 2d, and was returned same evening after night. Plaintiff did not want the property taken under the mortgage, but said it would have to go, but Reeves must come after it. The team was only gone one day—on the second of January, 1860—from morning till night. The horse was worth $175, wagon $95, harness $30. Lampett, the plaintiff, was born in June, 1838, and will be twenty-two years old next June.

17 Plaintiff called Thomas C. Reeves, who is the mortgagee in the mortgage read. I sold the horse to Mrs. William Fields for her boy. The boy took the horse away at that time. The note was not paid at maturity. I took the property on the third of January, 1860. When I went after the property on that day, and found that William A. Tinney had levied two small executions against William Fields on the same, I paid off the same, and took the property, and had it sold under the mortgage; and I bid the property in myself, and then sold it to plaintiff. I went to Fields' on the second of January. The plaintiff was then away, and had driven off the team, and Mrs. Fields could not tell where he had gone, or when he would return with it, and Fields was not at home. On the third of January, early in the day, I told plaintiff that I must have the property. He said, if I must have it,

I should come and get it. After I bought the property I kept it at my house. I sold it to plaintiff on the sixth day of January, 1860. He then took it away. The horse, wagon, and harness were worth $300. Mrs. Fields made the bargain nearly a year ago for the horse. I never owned the wagon. William Fields gave me the mortgage on the property. I went for the property January 2d, 1860. Mrs. Fields told me that the plaintiff had gone to the country. I do not know that I should have taken the property that day.

19 Ralph Flory called by plaintiff, who testified that the property was sold at auction by him, at Reeves' request, under the mortgage, on the fourth or fifth of January, 1860. Reeves bought the property for $215.

19 William A. Tinney called by defendant, who testified that he knew the property. Witness took possession of the property under two executions in his hands as constable, sent from Logan county, against William Fields, for $47 72. Gill told witness, when he gave him the executions, to hold on, and see if Reeves took the property under his mortgage; and Reeves did not seize the property under the mortgage. On the third of January, 1860, Reeves came to me much excited, and paid off the executions in my hands and took possession of the property. I took the property from the stable of Fields in the forenoon of January 3d, 1860. The stable was pointed out to me by Tharp. I have repeatedly seen the property in William Fields' possession last spring, but don't recollect seeing him use them since midsummer.

20 Cross-examined by plaintiff. The property was not on the place where Fields lived, and don't know that Fields owned or had possession of the stable; and took the horse when no one was present. The execution read in evidence was sent to witness by defendant. Soon after he had surrendered the property to Reeves, witness declined taking it, and returned the execution to defendant.

20 Plaintiff admitted that there was a judgment obtained before James Galbraith, a justice of the peace of Tazewell county, in favor of Hamilton & Dugger, for $73 67 debt, and $10 03 costs, against William Fields, upon which execution issued on the twelfth of December, 1859.

20 Execution, dated 12th December, 1859, in favor of Hamilton & Dugger against William Fields for $73 67 debt, and $10 03 costs, issued by James Galbraith, a justice of the peace in Tazewell county.

21 Indorsement of constable: Execution came to his hand December 24, 1859, and levied on one grey horse, one wagon and double harness, January 21, 1860, and sold February 1, 1860.

22 Robert Parker called by defendant, who testified that the defendant was, at time of levy and sale of property, a constable of said county of Tazewell, state of Illinois. Thomas C. Reeves, the plaintiff, and William Fields live in the city of Pekin.

22 John Gridley called by defendant, who testified that he is clerk of the county court of Tazewell county, and that defendant was elected constable of said county on the 6th of April, 1858, and is still a constable of said county.

22 Rawley S. Doolittle was called by plaintiff, who stated that he employed the plaintiff to break some land for him in the fall and summer of 1859, with his team, and that he settled with plaintiff for the same.

The court gave judgment for plaintiff for $300 and costs of suit.

22 The defendant then moved for a new trial on the following grounds:

1st. The judgment is contrary to evidence.

2d. The judgment is contrary to law.

23 The court overruled the motion for a new trial, to which defendant then and there excepted.

23 Appeal bond.

24 Certificate, seal and signature of clerk to record.

Errors assigned:—

1st. The court erred in not granting a new trial.

2d. The judgment should have been for defendant.

3d. The judgment is manifestly unjust, and contrary to law and the evidence.

JAMES ROBERTS and S. D. PUTERBAUGH,
For Plaintiff in Error.

Samuel B. Buckley

vs.

Edwin D. Lampett

Abstract of Record

Filed Apr 19. 1860

L. Delano

Clerk

Supreme Court—Third Division.

URI OSGOOD, ET. UX.,
Appellants,
vs.
HENRY K. STEVENS,
Appellee.
} Appeal from Will Circuit Court.

Record.

ABSTRACT OF CASE.

1 Caption of Record.

2 Precipe for Writ of Sci. Fa. to foreclose Mortgage.

2–5 Writ of Sci. Fai. and Sheriff's return of service.

2 Commencement of Sci. Fa. states that Henry K. Stevens, by his Att'ys, &c., did file, &c., a certain Deed of Mortgage, &c., duly executed, acknowledged, certified and delivered, and recorded, [but no time is alleged,] setting forth a copy of same in the Sci. Fa.

3–4 Copy of Mortgage, acknowledgment and certificate of record,
3 [Near top of page,] Mortgage recites, "That said party of the first "part is justly indebted to said party of the second part in the sum "of $4000,00, lawful money, secured to be paid by his certain "Bond bearing even date herewith for the sum of four thousand
3 "Dollars, and payable to said Henry K. Stevens." Property Mortgaged, L. 1 in B. 27, in that part of the City of Joliet, laid out platted and recorded as Bowen's Addition to Joliet.

3 [Near bottom of Page, after the habendum clause.] "Provided "always," &c.,—"that if the said party of the first part," &c., "shall well and truly pay or cause to be paid," &c., "the aforesaid "sum of money with such interest thereon, at the time and in the "manner specified in the above mentioned Bond according to the "true intent and meaning thereof, that then and in that case these "presents and every thing herein expressed shall be absolutely "null and void."

No. Folio. 17 Cost, Am't Rec'd pay'mt from Appellant.

5 After executing the Mortgage the Sci: Fa: contains the following allegations :—"And whereas the monies secured to be paid by said "Mortgage Deed, are fully due with the interest thereon arising "and remain unpaid. And whereas the condition of said Bond re- "ferred to in the said Mortgage, among other things, provided for "the payment of the sum of one thousand dollars and interest "thereon, at and after the rate of six per cent. per annum, on the "12th day of October, A. D. 1858."

5 Command to the Sheriff to Summon the Defendants (in the Court below) to appear "to show cause (if any they have) why judgment "should not be rendered against them for *such sum or sums of* "*money as shall be found due and owing* to the said Henry K. "Stevens."

6 December Term, 1858; Rule to plead extended.

General Demurrer to Sci: Fa: filed Dec. 16, 1858.

7 May Term, 1859; Demurrer argued and taken under advisement by the Court.

October Term, 1859; Demurrer to Sci: Fa: overruled and Defendants (in the Court below) abide by their demurrer, whereupon by order of Court the Defendants were called and not further answering, judgment was entered against them by default, in favor of Plaintiff, "for his damages in his declaration mentioned," and the Clerk ordered to assess the damages. The Clerk assessed and reported the damages at $1120,00, which was approved, and judgment entered for that amount in *damages*, with costs of suit against the Defendants and execution awarded [not against the Mortgaged premises] but against the Defendants.

7 Defendants excepted and prayed for an appeal to the Supreme Court, which was granted, on condition that an Appeal Bond be filed in sixty days with J. E. Streeter, security in the sum of $1500,00.

7 Oct. 20, 1859, during the same October Term, Appeal Bond executed and approved in open Court.

9 Appeal Bond set out.

10 Clerk's Certificate to Record.

11 Assignment of Errors.

12 Joinder in Error.

URI OSGOOD. Appellant
in pro. per and of Counsel, &c.

Supreme Court—Third Division.

URI OSGOOD, ET. UX.,
Appellants,
vs.
HENRY K. STEVENS,
Appellee.
} Appeal from Will Circuit Court.

POINTS AND BRIEF OF APPELLANTS.

1st. There is no allegation whatever of the time or place, when or where the Mortgage set out in the Sci. Fa. was executed, acknowledged or delivered—*as to time*, See 1, Chitty's Pl'ds. 257 to 263; Gould's Plds. Ch. 3 § 92; Stephens on Plds. 292, Rule II. *As to venue.* See 1. Chitty's Plds. 266–268; Gould's Plds. Ch. 3, §§ 102–103–106; Stephens Plds. 287-8-9.

2d. The Mortgage recited in the Sci. Fa. discloses an indebtedness in gross of $4000,00, without showing whether it was by installments or otherwise, and the Sci. Fa. alleges that by the condition of the Bond referred to in the Mortgage, $1000,00 and interest thereon, became due on the 12th October, 1858; but there is no allegation showing whether this $1000,00 and interest, was the first, last, or any other installment. And there is no allegation showing that the last installment was due when the suit was commenced. See Rev. L. 304-5, § 23; D. B. Cook & Co's Ed. 976, § 23; 1 Scam. Rep. 475-6; Day *vs.* Cashman, et. al.

3d. There is no averment in the Sci. Fa. of a request to pay or of a refusal to pay—nor is there any breach of any kind alleged in the Sci. Fa. See 1 Chitty's Plds. 320-332-336-337; Gould's Plds. Ch. 4, § 27.

4th. There is no certainty in the Sci. Fa. and it no where appears what amount of money is due and unpaid on the Mortgage; nor does said Sci. Fa. require the parties to appear and show cause why judgment should not be rendered *for any* given sum of money *due and unpaid.* See 1 Chitty's Plds. 261; Gould's Plds. Ch. 4, § 23; Rev. L. 304-5, § 23; D. Cook & Co's Ed. 976.

5th. A *Sire Facias* to foreclose a Mortgage is a proceeding *in rem.* and judgment and execution should be awarded against the property Mortgaged. In this case the judgment is *in personam*, and is for $1120,00 damages and execution awarded against the Defendants below. See Rev. L. 304-5, § 23. D. B. Cook & Co's Ed. 976, § 23; 1 Scam. Rep. 25, Menard vs. Marks; Id. 231,—Marshall vs. Maury; 4 Gil. Rep. 57, State Bk. vs. Wilson, et. al.

URI OSGOOD. Appellant
in pro. per and of Counsel, &c.

Supreme Court

Mr Osgood et ux
Appellants

vs

Henry K Stevens
Appellees

Abstract & Points

1

Pleas to a Term of the Circuit Court within and for the County of Tazewell and State of Illinois begun and held at the Court House in the City of Pekin on the First Monday of the Month of Febinary in the year of our Lord One Thousand Eight Hundred and Sixty Present the Honorable James Harriott Jude of the Twenty First Judicial Circuit Composed of Tazewell, Mason &c.

Be it Remembered that on the 23d day of January A.D. 1860 a Praecipe was filed in the words and figures following to wit ~

State of Illinois } Of the Febuary Term of the
Tazewell County } Tazewell Circuit Court A.D. 1860

Edwin D. Lampett.
vs.
Samuel B. Buckley } Trespass.
Damages $500. ~

The Clerk of the Circuit Court will please issue a summons in the above entitled cause for the above named defendant to the Sheriff of Tazewell County, returnable to the next term of the Circuit Court

Wm. C. Young Esq
Clk.

Wm. B. Parker & Son
Pffs attys

2

And now afterwards to wit on the day and year last aforesaid a Summons issued in the words and figures following to wit

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

We Command you that you summon Samuel B. Buckley if he shall be found in your County personally to be and appear before the Circuit Court of Tazewell County on the First day of the next term thereof, to be held at the Court House, in Pekin, in said County on the First Monday of February next, then and there to answer unto Edwin D. Lampett in plea of Trespass to the damage of said plaintiff as he says in the sum of Five Hundred dollars ($500.) And have you then and there this writ with an endorsement thereon, in what manner you shall have executed the same Witness M. C. Young Clerk of the said Court and the Seal thereof at Pekin aforesaid this 23d day of January 1860.

L. S.

Merrill C. Young
Clerk Circuit Court
By L. H. Stone Deputy.

3 ~ Which said Summons was afterwards returned on the 26th day of January A.D. 1860 with the following endorsement thereon ~ to wit ~

State of Illinois }
Tazewell County } ss.

I have duly served the within by reading the same to the within named defendant S. B. Buckley this 26th day of January A.D. 1860.

J. C. Reeves ~
Sheriff T. C.

And now afterwards to wit ~ on the 25th day of January A.D. 1860 a Declaration was filed in the words and figures following ~ to wit ~

State of Illinois } In the February Term of the Taze-
Tazewell County } ss. well Circuit Court A.D. 1860.

Edwin D. Lampitt Complains of Samuel B. Buckley in a plea of Trespass ~ for that the said Samuel B. Buckley on the Twenty First day of January in the Year of Our Lord One Thousand Eight Hundred and Sixty ~ to wit ~ at Pekin at the County and State aforesaid with force and Arms took and carried away the Goods and Chattels ~ to wit ~ One Grey Horse ~ to the value of two Hundred and fifty dollars, one Two

4

House Wagon of the value of Two Hundred Dollars ~ One double Harness to the value of Fifty Dollars the propirty of the plaintiff then and there found, being of Great value to wit of the value of Five Hundred Dollars. And Converted the same to the use of the said Samuel B. Buckley against the peace &c., and to the damage of the said Edwin S. Lamphier Five Hundred Dollars ~ and therefore he sues &c. ~

Wm B. Parker & Son
Plaintiffs Attorneys ~

And now afterwards to wit ~ at a Term of the Circuit Court begun and held at the Court House in the City of Pekin within and for the County of Tazewell and State of Illinois on the First Monday of the Month of February in the year of our Lord One Thousand Eight Hundred and Sixty ~ Present the Honorable James Marriott Judge. Hugh Fullerton Esq Prosecuting Attorney ~ Thomas C. Reeves Sheriff and Merrill C. Young Clerk the following Pleas were filed viz the 21st day of February A.D. 1860 in words and figures following to wit ~

State of Illinois } In Circuit Court
Tazewell County } February Term 1860.

5

3-

Samuel B. Buckley
Ats
Edwin F. Lampett
} for

And the said defendant by Pittsbaugh and Roberts his attorneys comes and defends the wrong and injury when &c and says that he is not guilty of the said supposed trespasses above laid to his charge or any or either of them or any part thereof in manner and form as the plaintiff hath above thereof complained against him And of this he the said defendant puts himself upon the country &c.

And for a further plea in this behalf as to the seizing and taking of the said personal property in said plaintiffs declaration mentioned, and taking and carrying the same away the said defendant by leave &c. says that the said plaintiff ought not to have or maintain his aforesaid action thereof against him, Because he says that long before and when &c. the said defendant was a Constable of Tazewell County Illinois, and being such Constable, by virtue of an execution issued by one James Galbraith a Justice of the Peace of Tazewell County, in the name of the

People of the State of Illinois, directed to any Constable of said Tazewell County, Commanding that of the Goods and Chattels of William Fields in said County to make the sum of Seventy Three dollars and 67 cents debt, and ten dollars and 3 cents Costs, with interest at the rate of Six per cent per annum from the Twenty First day of November 1859. when judgment was rendered which Hamilton and Duggan recovered before the said James Galbraith against the said William Fields. And the said defendant avers that the said execution was placed in the hands of said defendant as such Constable of Tazewell County on the 24th day of December 1859. to be by him executed and returned as by law required. And defendant further avers that the said William Fields was at the time the said execution came to the hands of said defendant as aforesaid the owner of said Grey Horse, said two horse wagon and said double harness the goods and chattels in said declaration mentioned without this that they were the goods and chattels of said plaintiff, as by said declaration is above sup-

7

7 posed whereupon the said defendant just before the said first time when &c to wit on the day in said declaration mentioned, as such Constable as aforesaid, and by virtue of said execution And in pursuance of the commands of the said execution, seized, took, and carried away the said Horse and wagon and said harness in said declaration mentioned to sell the same to pay and satisfy said execution as it was lawful for the said defendant to do for the cause aforesaid, which are the same supposed trespasses in the introductory part of this plea mentioned, And whereof the said plaintiff hath above thereof complained against him without that this that he the said defendant is guilty of seizing taking, Keeping and converting the said property in said declaration mentioned at &c aforesaid or elsewhere. And this the said defendant is ready to verify wherefore he prays judgement &c"

Rutledge & Roberts
For Deft.

And the said plaintiff comes and de-

8

fends & & And says precludi non - Because he says that the said One Grey Horse, and One Bay Horse in the said plaintiffs declaration mentioned, are the goods and Chattels of the said plaintiff and not the property of the said William Fields as the plea by the said defendant above pleaded. of this he puts himself upon the Country &c"

B. S. Rettyman
Atty for plff -

And afterwards to wit - on the 7th day of February A.D. 1860 an affidavit was filed in the words and figures following to wit -

State of Illinois } Circuit Court
Tazewell County } February Term 1860.

Edwin D. Lampitt
vs
Samuel B. Buckley }

Samuel B. Buckley

the defendant in the above entitled cause being duly sworn according to law, deposeth and says, that the plaintiff in the above entitled cause is so insolvent that he is

unable to pay the costs of this suit, and that he is so unsettled in his affairs as to endanger the Officers of the Court with respect to their legal demands. Affiant therefore prays for a rule on said plaintiff to give security for the payment of costs of this suit. Affiant further says not.

Subscribed and sworn to before me this 7th day of February 1860. } S. B. Buckley

Merrill C. Young, Clerk } Whereupon a Rule is entered upon Plaintiff to file Security for Costs by Thursday next. And afterwards to wit on the 9th day of February A.D. 1860 a Bond was filed in the words and figures following to wit

Edwin D. Lampitt
vs.
Samuel B. Buckley } Trespass. } February Term of the Tazewell Circuit Court 1860.

I do hereby enter myself Security for Costs in this Cause, and acknowledge myself 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 9th day February 1860 } B. S. Pettyman

10 afterwards to wit

At a Term of the Circuit Court begun and held at the Court House within and for the County of Tazewell & State of Illinois at Pekin, on the first Monday in the Month of February in the Year of our Lord one thousand eight hundred and Sixty it being the 6th day of said Month of February, Present the Honorable James Harriott Judge of the 21st Judicial Circuit of the State of Illinois.

Hugh Fullerton, Prosecuting Attorney
Thomas C. Reeves, Sheriff &
Merrill C. Young, Clerk.

to Wit

Friday February 24th A.D. 1860

Edwin D. Sampett
v
Samuel B. Buckley
Trespass

And now on this day come as well the Plaintiff by his attorneys, Parker & Lou as the Defendant by his attorney S.D. Puterbaugh and by agreement of Parties herein, a Jury is Waived, & this Cause is tried by the Court. And the Court having heard the

allegations & proofs of the parties and argument of Counsel thereon, and being fully advised in the premises, is of opinion, and does therefore order and adjudge that the Plaintiff recovers of said Defendant the sum of Three hundred dollars ($300.) Damages, and likewise the Costs and Charges by him about his suit expended and that Execution issue therefor.

Whereupon the Defendant entered his motion for a new trial in this Cause, which said motion is by the Court overruled -

Thereupon the Defendant Prays an appeal, which is allowed by the Court, with Bond to be filed in thirty days, with Thomas N. Gill as Security in Sum of Five hundred Dollars.

Afterwards to wit, on the 25th day of Febuary A.D. 1865 The Defendant filed a Bill of Exceptions in the words & figures following to wit:

State of Illinois } Circuit Court
12 Tazewell County } February Term 1860.

Edwin S. Lampitt
vs
Samuel B. Buckley } Bill of Exceptions—

Be it Remembered that at the trial of this Cause the plaintiff offered in evidence the Record of a Chattle Mortgage from William Fields to Thomas C. Reeves which is in the words and figures following to wit—

William Fields
To
Thomas C. Reeves

Know all men by these presents that I William Fields of Pekin of the County of Tazewell in the State of Illinois of the first part, for and in Consideration of $350. to me in hand paid by Thomas C. Reeves of the same place of the second part, the receipt whereof is hereby acknowledged, do hereby Grant—Bargain and Sell unto the said party of the second part, his heirs and assigns the following Goods and Chattels— to wit— One

Dark Bay Horse 7 years old - One Grey Horse 8 years old - One two horse wagon & sett Double Harness - To Have and to Hold all and singular the said Goods and Chattels unto the said party of the Second part his heirs and assigns forever.

And the said party of the first part for himself, his heirs, his Executors and administrators doth hereby Covenant to and with the said party of the Second part and his assigns that he is lawfully possessed of the said Goods and Chattels as his own property - that the same are free from all incumbrance and that he will warrant and Defend the same to him the said party of the Second part and his assigns against the lawful claims and demands of all persons.

Provided - Nevertheless - that if the said party of the first part, his heirs, Executors and administrators, shall well and truly pay to the said party of the second part his heirs, Executors, Administrators or assigns for the redemption of the above bargained Goods and Chattels - the just and full sum of Four Hundred and Fifty dollars on or before the first day of January next, with interest

according to the tenor and effect of a
14 certain Promissory Note given by the said
party of the first part to the said party
of the Second part bearing even date here
with, then this Mortgage to be void
otherwise to remain in full force and vir
tue, And Provided further that until de
fault be made by the said party of the
first part in the performance of the
Condition aforesaid it shall and may
be lawful for him to retain the posses
sion of the said Goods and Chattels, and
to use and enjoy the same But if the
same or any part thereof shall be taken
on Execution, Attached or Claimed by any
other person or persons at any time before
payment or if the said party of the first
part shall attempt to sell the same
without the authority and permission
of the said party of the second part in
writing expressed then it shall and may
be lawful for the said party of the second
part or his assigns to take immediate
and full possession of the whole of the
said Goods and Chattels to his and their
own use

In Witness Whereof the said

party of the first part has hereunto set his Hand and Seal this 28th day of April 1859.

William Fields (Seal)

State of Illinois
Tazewell County } ss.

This Mortgage was acknowledged before me by William Fields this 3d day of May 1859.

Samuel P. Bailey
Justice of the Peace Tazewell County.

And then called Alexander Orr who testified that he knew the horse in controversy. The Horse and wagon and harness were levied upon and taken by the defendant on the 21st of January 1860 - the horse was taken to Gills office. The Horse and harness were in the Stable of plaintiff at the time the levy was made - the Stable was not Fields lot or premises - the plaintiff lived with William Fields - Fields is plaintiffs Step Father. Lampitt has been driving and using the team since Midsummer. The horse has been kept in Stable where they were taken by defendant ever since in October 1859. Plaintiff had possession of it when the levy was made

William Fields was then called and testified
16 that he knew the property in controversy—
the property belonged to plaintiff on the
21st of January 1860, and had since some
time in the early part of the Summer of 1859.
Witness never owned the horse— he had own-
ed the wagon the whole time, and sold to
plaintiff some time in the summer of 1859.
Plaintiff was to pay witness $75— and pay
off Mortgage for the team. I traded another
wagon for the wagon in question, and Thomas.
C. Reeves paid $50— difference for me. The plain-
tiffs Mother bought the horse of Thomas. C.
Reeves last Spring. I am the husband of the
Mother of plaintiff. I gave the Mortgage
which has been read, to Thomas. C. Reeves.
The debt for which it was given was never
paid. The Mortgage was closed by Reeves;
the horses and wagon and harness were away
when the Mortgage became due; Plaintiff
took them off that day and did not return
with them until after night, as soon as
the horses came back the Mortgage was clo-
sed. The property was sold by Flory under the
Mortgage.
Cross examined by defendant— I never owned
the horse. Plaintiffs Mother bought the
horse for him— I gave my note for $350. dol

17

and the Mortgage to secure the same. The price of the horse was included in the $330 note. the horse was $175, and the balance of the $330 I owed Reeves. The horse was in possession of plaintiff while the Mortgage was on the same. Plaintiff is my step-son he lives with me. Plaintiff rented the stable in which the horse was kept of Joseph Bequath it was not in my possession or on my premises. I traded the wagon to the plaintiff about one year ago this Spring. On the 2d of January the team was over the Mackinaw distant about 7 miles it was taken away by plaintiff on the morning of January 2d and was returned same evening after night. Plaintiff did not want the property taken under the Mortgage but said it would have to go, but Reeves must come after it. The team was only gone one day, on the 2d of January 1860 from morning till night. The horse was worth $175. wagon $95 Harness $30. Lampert was born in June 1838, and will be 22 years old next June.

Thomas C. Reeves Called by plaintiff and testified I am the Mortgagee in the Mortgage read. I sold the horse to Mrs. William Fields for her boy. The boy took the horse away at that time. The note was

18

not paid at Maturity. I took the property on the 3d of January 1860. when I went after the property on that day and found that Williams. A. Tinney had levied two small executions against William Fields on the same, I paid off the same and took the property and had it sold under the mortgage, and I bid the property in myself, and then sold it to plaintiff. I went to Fields on the 2d of January the plaintiff was then away, and had driven off the team, and Mrs Fields could not tell where he had gone, or when he would return with it, and Fields was not at home; on the 3d of January early in the day I told plaintiff that I must have the property he said if I must have it, I should come and get it, and said go and get it some time early in the day of the 3d After I bought the property I kept it at my house when I sold it to plaintiff on the 6th day of January 1860. he then took it away. The Horse, wagon and Harness were worth $300 Mrs Fields made the bargain near a year ago for the horse. I never owned the wagon. Wm Fields gave me the mortgage on the property I went for the property Jan 2d 1860. Mrs Fields told

me that the plaintiff had gone to the Country – I do not know that I showed have taken the property that day.

Ralph Flory – called by plaintiff, who testified that the property was sold at Auction by him, at Reeve's request, under the mortgage, on the 4th or 5th of January 1860. Reeves bought the property for $215 –

The Plaintiff here rested his case.

The Defendant then called William A. Tinney – who testified that he knew the property – witness took the possession of the property under two executions in his hands as Constable, sent from Logan County, against William Fields for $47.72, Gill told witness when he gave execution, and Reeves did not seize property under the execution; on the 3d of January 1860 Reeves came to me much excited, and paid off the executions in my hands and took possession of the property. I took the property from the Stable of Fields in the forenoon of January 3d 1860. The Stable was pointed out to me by Sharp. I have repiteadly seen the property in Wm Fields possession last Spring, but dont recollect seeing Fields use them since

Midsummer.

20 Cross Examined — The property was not on the place where Fields lived, and dont know that Fields owned, or had possession of the Stable, and took the horses when no one was present. The Execution read in evidence was sent to witness by Defendant soon after he had surrendered the property to Reeves, witness declined taking it and returned the execution to defendant.

The Plaintiff admitted that there was a judgement obtained before James Galbraith a Justice of the Peace of Tazewell County Illinois in favor of Hamilton & Dugger for $73.67, and $10.03 costs against William Fields upon which execution issued on the 12 of Dec 59. The defendant then offered the execution issued upon the judgement and the return made on the same in the words and figures following — to wit —

State of Illinois } ss. The People of the State
Tazewell County } of Illinois to any Constable of said County —

Greeting — —

We command you, that of the goods and chattels of William Fields in your County, you make the sum of

21 Seventy Three Dollars and 67 Cents debt, and Ten Dollars and 5 cents cost, (with interest at the rate of Six per cent. per annum, from the twenty first day of November 1859, when judgement was rendered,) which Hamilton & Dugger lately recovered before me in a certain plea against the said William Fields and thereof make return to me within Seventy days from this date. Given under my hand and seal, this 12th. day of December 1859

James Galbraith J. P. (Seal)

Come to hand this 24th. day of December 1859 at 5 O'clock P. M. S. B. Buckley Constable J. C. Levied on one Grey Horse, one ~~double~~ wagon and double harness this 21st. day of January 1860. Sold the same this first day of Feb. 1860 between the hours of ten A. M. and four P. M. to John Aycock, he being the best bidder

Wagon	$30.00
Harness	5.00
Horse	62.00
	97.00
	24.70

$72.30 paid to Defendant.

S. B. Buckley Constable

22

Robert Parker was called by the Defendant and testified, that the defendant was at time of levy and sale of property a Constable of said County of Tazewell, State of Illinois Thomas C. Reeves, William Fields, and Plaintiff live in the City of Pekin

John Gridley called by Defendant and testified that he is Clerk of the County Court of Tazewell County, and that defendant was elected Constable of said County on the 6th of April 1858, and is still a Constable of said County.

The Plaintiff called R. S. Doolittle who testified that he employed the plaintiff to break some land for him in the fall and Summer of 1859 with his team, and that he settled with plaintiff for the same.

This was all the Evidence offered in the Case.

The Court thereupon gave judgement for the plaintiff against defendant for $300. 00/100 and Costs of Suit.

The Defendant then moved for a new trial on the following grounds

1st. The judgement is Contrary to the evidence

2d. The judgement was contrary to law

The Court overruled the motion for a new trial - to which the defendant then and there excepted - And prays that this Bill of Exceptions may be signed and sealed by the Court - which is accordingly done

James Harriott (Seal)

on the 5th day of March AD 1860

And now afterwards to wit, came the appellants and filed their appeal Bond which is in the words and figures following to wit

Know all men by these presents that we Samuel B. Buckley and Thomas N. Gill of the County of Logan and State of Illinois are held and firmly bound unto Edwin D. Lamphett in the penal sum of five hundred dollars lawfull money of the united States for the payment of which well and truly to be made we bind ourselves our heirs executors and administrators. jointly. severally and firmly. by these presents. Witness our hands and seals this 25th day of February AD. 1860

The condition of the above obligation is such that whereas the said Edwin D Lamphett did on the 24th day of February 1860 in the Circu-

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it court of Tazewell County State of Illinois recover a judgment against the abov bounden Samuel B Buckley for the sum of Three hundred Dollars and costs of suit from which judgment the said Samuel B Buckley has taken an appeal to the supreme court of the state of Illinois. Now if the said Samuel B. Buckley shall pay the said judgment costs interest and damages in case the judgment shall be affirmed and shall prosecute his appeal with effect then the abov obligation to be void, otherwise to remain in full force and effect.

S. B. Buckley Seal
Thomas N. Gill Seal

State of Illinois
Tazewell County ss

I, Merrill L Young Clerk of the Circuit Court within and for said County do hereby certify the foregoing Twenty three and one third pages to be a true correct and exemplified copy of all the papers on file and all the proceedings had in the cause therein named as fully as the same remain of Record in my office

Witness Merrill L Young Clerk and the seal of said Court hereto affixed at Pekin the 5th day of March A.D. 1860

Merrill L Young Clerk

Whereupon comes the said Edwin D. Sampith and says that there is no error either in the record and proceedings aforesaid or the rendition of the judgment aforesaid, and prays that the said Supreme Court here, may proceed to examine, as well the record and proceedings aforesaid, as the matters above assigned for Error, and that said judgment in manner and form aforesaid may be in all things affirmed.

B. S. Pettigrew &
N. M. Rodd Stead
For Appellee

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Edwin D. Lamfett

v

Samuel B. Buckley

Appeal

Transcript

Filed Apl. 18. 1860

L. Leland

Clk.

F. S. P. Clk.

James Roberts &

S. D. Pulesbaugh

for Appellant