

12254

No. 1

Supreme Court of Illinois

Shirley.

vs.

Phillips, et al.

71641  7

State of Illinois }
County of Cook } SS.

Shew before the Honorable
J. M. Wilson Judge of the Cook County Court of
Common Pleas within and for the County of Cook
and State of Illinois at a vacation term of the
Cook County Court of Common Pleas begun
and holden at the Court House in the City of
Chicago in said County and State on the first
Monday being the seventh day of January in
the year of our Lord one thousand eight hund-
red and fifty six and of the Independence
of the United States the Eightieth -

Present the Honorable John M. Wilson Judge
James Andrew Sheriff
Attest Walter Kimball. Clerk

Be it remembered that heretofore to wit: on the twenty second day of January in the year of our Lord One thousand Eight Hundred and fifty six, comes the Plaintiff Theodore F. Phillips William H. Van Wagener Anthony German Emilian Hook & William B. McGrath by their attorneys P. W. Hedgie - and the Defendant Thomas Shirley, by his attorneys, Cornell Barron & Rogers and filed in the office of the Clerk of the Cook County Court of Common Pleas an agreed case which said agreed case is in words and figures as follows to wit;

Theodore F. Phillips	}	Cook County } ss
William H. Van Wagener		
Anthony German		
Emilian Hook &		Cook County Court
William B. McGrath.		Of Common Pleas
Thomas Shirley		

An agreed case in the above entitled cause is submitted to the Court upon the following statements of facts.

On the sixteenth day of November A.D. 1855 the Pleffs being then the holders of a promissory note signed by Benjamin Kroger with ^{Warrant} of attorney to confess judgment thereon

3 45 3 entered judgment upon the same at the vacation term of the Cook County Court of Common Pleas in the manner herein after stated - In the writ Warrant of Attorney copy of date proof of execution and declaration the name of the Defendant was written Benjamin Kroger - In the Cognovit judgment Record and Execution as well as in the filing of all the papers in the case the name of the Defendant was written William Kroger -

The judgment was also Docketed as against William Kroger -

On the 20th day of said November at a Quarter past 9 o'clock in the forenoon the Execution upon said judgment in which the name of the Defendant was written William Kroger was placed in the hands of the Sheriff of Cook County for service - and during the evening of 21st day of November, said Sheriff took possession of the personal property of Benjamin Kroger then being in the store occupied by him at the corner of Clark & North Main Street in the City of Chicago County of Cook of certain - and forcibly ejecting Thomas Shirley the Defendant then in possession of said Store, retained possession of the goods wares & Merchandise therein -

On the 20th day of November A.D. 1855

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Benjamin Kroger (without knowledge of Phillips
having obtained judgment as aforesaid) executed to said Thomas Shirley an assignment
which is herewith submitted, of all his
property & effects in trust for the benefit
of all the creditors of said Kroger & on the
afternoon of the same day between the hours
of 1 & 2 o'clock and before said Sheriff took
such possession as aforesaid, delivered to said
Shirley possession thereof at his store aforesaid
& said Shirley then & there held possession
thereof until ejected by the Sheriff as
aforesaid.

On the morning of said 22^d day of November said Shirley demanded of said Sheriff
the goods ware & merchandise aforesaid then
in the possession of said Sheriff claiming
them by virtue of the assignment aforesaid.
& also claiming that said property heretofore
of said Benjamin Kroger could not be holden
by the Sheriff by virtue of the Execution
aforesaid.

Said Shirley thereupon had an interview
with said Sheriff & John H. Kedzie Esqr Counsel
for said Phillips et al, who claimed that
said goods were held by said Execution and
an agreement was finally entered into

which is in words of agency as follows -

" In the matter of the Judgment & execution in favor of Phillips et al vs B. Kroger & also of the assignment of said Kroger to Tho Shirley Esq - It is agreed that said Shirley the assignee may go on and dispose of the goods leased or assigned & keep safely all money arriving from the proceeds of the same paying to the plaintiffs in said suit all their legal rights as fully as if they were to go on & complete the levy & sale under said execution the rights of the parties in law & equity to be unaffected and to be determined by an agreed case to be submitted to the Court with right to either party of taking an appeal or in any other way that the parties may hereafter agree upon -

Nov 22 1855

J. H. Kidzie
Attorney for Phillips et al

Thomas Shirley
Assignee of B. Kroger

Since the entering into of said said agreement the greater part of the goods & assets of said Benjamin Kroger have been sold by said Shirley & the proceeds of such sale

6. are now in his hands to an amount sufficient to satisfy the Plffs Judgment & costs -

On the 22^d day of November the Court upon application of Plffs Counsel on notice to the attorney of Record who signed the Cognovit as aforesaid, but without notice to said Kroger personally or to said Shirley allowed the Plffs to amend the Cognovit filing of the paper Judgment Record and Execution, by striking out the word William wherever the same should occur & inserting in its stead the word Benjamin so as to read Benjamin Kroger instead of William Kroger -

It is agreed that all the papers in the case of Phillips et al v. Kroger & the Judgment Record and Docket & the assignment to said Shirley may be referred to by either party & form a part of this case -

The validity and effect of said Judgment, execution levy and proceedings as well as of said Assignment are submitted to the Court with right to either party to take an appeal within twenty days from the judgment of this Court on giving bond & security as the Court shall direct -
If the Court shall be of opinion that

7 the Plffs obtained a prior lien by virtue of their Judgment execution & proceedings; then the order of the Court shall be that said Shirley pay over to the Plaintiff the amount of their Judgment & costs -

If on the contrary the Court shall be of opinion that the goods are held by said assignment then the order of the Court shall be that the proceeds of said goods be appropriated in the manner specified in the same & this fact to be sworn to by said Kroger & admitted on his oath -

J. H. Hodges
Atty for Plffs
Cunell Barron & Rogers
Attys for Deft

The following are copies of all papers filed in the Clerk's office, also all Records in the suit in which Theodore S. Phillips Wm. Tammenger Anthony German Amilian Hoar & William B. McGrath are Plaintiffs and Benjamin Kroger is Defendant - Referred to in the aforesaid agreed case - Copy of Declaration filed, November 16th A.D. 1855

Cook County Court
of Common Pleas
November Vacation Term
in the year A.D. 1855

State of Illinois }
Cook County } S.S.

Theodore F Phillips
William Van Wageningen Anthony German Emil-
ian Hook and William B. McGrath compo-
sing the firm of Phillips and Company
merchants doing business in Chicago in said
County plaintiffs in this suit by S. H. Dodge
their attorney - complain of Benjamin Kroger
defendant in this suit of a plea of trespass
on the case upon promises -

For that whereas the said defendant on
the tenth day of September in the year
one thousand eight hundred and fifty five
at Chicago in the County aforesaid made
a certain note in writing commonly called
a promissory note bearing date the day and
year last aforesaid and then and there deliv-
ered the said note to said Plaintiffs by which
said note the said defendant promised
to pay to the said Plaintiffs or to their
order by the name and style of Phillips
the Eight hundred and fifty dollars and
Twenty cents in sixty days after the date

9 thereof with interest for value received in
By reason whereof and by force of the Statute
in such case made and provided the said
defendant became liable to pay to the said
Plaintiffs the said sum of money in the said
note specified, according to the tenor and effect
of the said note, and being so liable the said
defendant in consideration thereof afterwards
to wit on the same day and year and at the
place aforesaid undertook and then and
there faithfully promised the said plaintiffs
well and truly to pay unto the said plaintiff-
iffs the said sum of money in the said note
specified according to the tenor and effect
of the said note - And whereas also the
said defendant afterwards to wit on the fif-
teenth day of November in the year of our
Lord one thousand eight hundred and fifty
five at the place aforesaid was indebted to
the plaintiffs in the sum of Two thousand
dollars lawful money of the United States
of America for goods wares and Merch-
andise sold and delivered to the said
defendant by the said plaintiffs at said
defendants request, and also for money
before that time lent and advanced by
the said plaintiffs to the said Defendant
and at the special interest and request of

the said defendant - And for other money by the said plaintiffs before that time paid laid out and expended for the said defendant and at the like request of the said defendant - And for other money by the said defendant before that time had and received to and for the use of the said plaintiffs - And being so indebted the said defendant in consideration thereof afterwards to wit on the same day and year last aforesaid and at the place aforesaid, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this court mentioned when the said defendant should be thereunto afterwards requested -

And whereas also the said defendant afterwards to wit; on the same day and year last aforesaid and at the place aforesaid accounted together with the said plaintiffs of and concerning divers other sums of money before that time due and owing from the said defendant to the said plaintiffs and then and there being in arrear and unpaid, and upon such accounting the said defendant then and there was found to be in arrear and indebted to the said plaintiffs in the further sum of two thousand dollars of like lawful.

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money as aforesaid - And being so found in arrear and indebted to the said plaintiffs the said defendant in consideration thereof afterwards to wit: on the same day and year last aforesaid and at the place aforesaid undertook, and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned when the said defendant should be thereunto afterwards requested -

Nevertheless the said defendant, although often requested &c to wit on the day when the said note became due and payable according to the tenor and effect thereof, and often times since to wit at the place aforesaid has not yet paid the said several sums of money above mentioned or any or either of them or any part thereof to the said plaintiffs, but to pay the same or any part thereof to the said plaintiffs the said defendant has hitherto altogether refused and still does refuse to the damage of the said plaintiffs of Two thousand dollars and therefore the said Plaintiffs bring suit &c

J. M. Hodges
Plaintiffs Attorney

12 To the within named Defendant

Take Notice that the following
is a copy of the note on which this action
is brought viz:

\$850.00

Chicago Sept 18th 1855

Sixty days after date for value
received I promise to pay to Phillips & Co
or order the sum of Eight hundred & 50
fifty & no Dollars with interest

signed Benjamin Kroger
Nov 16th 1855

J. H. Fredri

Plffs attys

Copy of Cognovit filed Nov. 16th 1855

Cook County Court of
Common Pleas of November
Term A.D. 1855

Benjamin Kroger

ads

Theodore F. Phillips
William N. Van Wagner
Anthony Seaman
Frederick Hook
William B. McGrath

Cognovit

And the said Benjamin

Kroger defendant in this suit by Ira S. Nichols Esqr his attorney comes and defends the wrong and injury wherein and says that he cannot deny the action as against of the said Plaintiffs nor that but the said Defendant did undertake and promise in manner and form as the plaintiffs have above thereof declared against him nor but that the said Plaintiffs has sustained damages by reason of the non-performance of the said several promises and undertakings aforesaid including fifteen dollars for attorneys fees to the amount of Eight hundred and seventy five Dollars and fifty four cents besides the costs and charges of the said Plaintiffs in this suit expended to be tried And the said defendant consents to immediate execution being issued on the judgment herein rendered, and release all errors in these proceedings -

Ira S. Nichols
Atty for Deft

Copy of Note filed November 16, 1855
\$850 75

Chicago Sept 10th 1855

Thirty days after date for value received
I promise to pay to Phillips & Co or order the sum of
Eight hundred & fifty 75 Dollars with interest &

Benjamin Kroger

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Know all men by these presents: That whereas the subscriber Benjamin Kroger is justly indebted to Phillips & Co upon a certain promissory note bearing even date herewith for the sum of Eight Hundred Fifty Two dollars made payable to the said Phillips & Co or order and due thirty days after date -

I am therefore in consideration of the premises and of the sum of one Dollar to me in hand paid by the said Phillips & Co the receipt whereof is hereby acknowledged I do hereby make constitute and appoint S. H. Hedzie or my attorney in any court of record to be my true and lawful attorney irrevocable for and in my name place and stead to appear before any Justice of the Peace or in any Court of Record in term time or vacation in any of the States or Territories of the United States at any time after the date hereof to waive service of process and enter a judgment in favor of the said Phillips & Co or his or their assignee or assignees upon the said note for the above sum or for as much as appears to be due according to the tenor and effect of said note with interest thereon together with costs: also for the usual attorneys fees to be added to the amount due on entering up Judgment

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also to file a cognovit for the amount that
may be so due with an agreement therein
that no writ of error or appeal shall be pre-
sented upon the judgment entered by virtue
hereof. nor any bill in equity filed to interfere
in any manner with the operation of such
Judgment and to release all errors that may
intervene in the entering up of said judgment
or issuing the execution thereon and also to con-
sist to immediate execution upon such judgm-
ent - Herely ratifying and confirming all
that my said attorney may do by virtue hereof

Witness my hand and seal this tenth
day of September A.D. 1855.

In presence of Benjamin Kroger

State of Illinois } S.S.
Cook County }

John C. Hall of said County
being duly sworn says that he is well acquain-
ted with the hand writing of Benjamin Kroger
whose name is subscribed to the within note
and warrant of attorney that he has seen said
Kroger write his name and that he verily
believes the signature of said Benjamin Kroger
to the within note and warrant of attorney to be
genuine -

Subscribed and sworn to before me this } Jno C Hall
16th day of November 1855.
Walter Kimball clerk

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And thereafter to wit; on the sixteenth day of November in the year of our Lord one thousand eight hundred and fifty five. said day being one of the days of the November Vacation Term of the Cook County Court of Common Pleas the following proceedings were had in said Cause and entered of Record to wit;

Theodore F. Phillips William H. Van Wagener Anthony German Julian Hook William B. McGloth	}	Confession
Benjamin ²¹ William Kroger		

This day came the said plaintiff by S. W. Kedzie their attorney and file herein their declaration of a plea of trespass on the case upon promises, and thereupon also comes the said defendant by Ora S. Nichols his attorney and files herein his warrant of attorney the execution of which being duly proved and also his Cognovit confessing the action of the said plaintiffs against him and that they have sustained damages by occasion of the premises to the sum of Eight hundred and seventy five dollars and fifty

unrecorded by leave of court
Nov 22 1855

17 four cents. Therefore it is considered that the said plaintiffs do have and recover of the said defendant their damages of Eight Hundred and seventy four dollars and fifty four cents in form aforesaid, confessed and also their costs and charges by them in this behalf expended and have execution therefor

Copy of Execution issued with endorsements thereon —

State of Illinois } ss
County of Cook }

The People of the State of Illinois to the Sheriff of said County — Greeting

We command you that of the lands and tenements, Goods and Chattels of ^{Benjamin} William Kroger in your County you cause to be made the sum of Eight hundred & seventy four Dollars and fifty four cents which Stephen F. Phillips William M. Van Wagoner Anthony German Gulian Hook & William B. McMath Plaintiffs lately in the Cook County Court of Common Pleas of said County at a term thereof begun and held at Chicago in said County on the first Monday of November instant, recovered against the said

Defendant and which by the said Court was
 adjudged to the said Plaintiffs for their
 Damages - And also the further sum of
 Four Dollars and seventy cents which
 were adjudged to the said Plaintiffs for
 their costs and charges in that behalf
 expended whereas the said Defendant
 was convicted as appears to us of record
 And have you these moneys ready to
 render to the said Plaintiffs for their
 Damages and costs aforesaid and make
 return of said suit with our endorsement
 thereon in what manner you shall have
 executed the same in twenty days from
 the date hereof.

Witness - Walter Kimball Clerk of
 our said Court and the Seal thereof at
 Chicago in said County this 20th day of
 November A.D. 1855

L.D.B.

Walter Kimball Clerk

Endorsed as follows.

By virtue of this writ I did
 on this 21st day of November 1855 lay upon a stock
 of clothing and furnishing goods in the store on
 the North West corner of North Clark and North
 Water streets in the City of Chicago a particular

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inventory of which was waived by the parties in
interest and on the 22^d day of November 1855 I
delivered the said Goods to Thomas Shiley by order
of Plaintiffs Attorney -

James Ardum Sheriff
By J. H. Horton Deputy

I have authorized the Sheriff to allow Tho Shiley
to take & dispose of the goods loaned on by him by
virtue of this writ under stipulation between
the Plaintiffs and said Shiley -

Decy 7th 1856

J. H. Kedzie
Plffs atty

Copy of affidavit of J. H. Kedzie filed Novem-
22^d A.D. 1855 -

Theodore J. Phillips
William H. Van Wagner
Anthony Herman
Gulian Hook &
William B. McGrath

Cook County Court
of Common Pleas

Benjamin Kroger

State of Illinois } S.S.
Cook County }

John W. Kedzie of said
County being duly sworn says that he drew

the cognovit in this case for the defendant's attorney and that by clerical error he inadvertently and by mistake wrote the name of said defendant William Kroger instead of Benjamin Kroger and that Ira S. Nichols Esq signed said cognovit without carefully comparing the name of the defendant in the cognovit with that in the declaration -

Subscribed and sworn to John H. Kedzie
before me this 22^d day of
November 1855.

Walter Kimball Clerk

And thereafter to wit on the twenty second day of November, in the year eighteen hundred and fifty five, said day being still^{mo} of the Days of the November Vacation Term of said Court the following further proceedings were had in said Cause and entered of Record to wit

Theodore F. Phillips	William M.	} Motion
Van Wagner	Anthony German	
Carlson	Mook	
William B. McQuath		
Benjamin Kroger		

This day came
the said parties by their attorneys and on

reading and filing affidavit herein and on motion of Geo. J. Nichols defendant's attorney and by consent of J. H. Kedzie plaintiff's attorney it is ordered that leave be given to amend the name of William to Benjamin Kroger in the bequest filed herein, and that the Judgment in this cause on the sixteenth day of November instant be amended and also the execution issued on said Judgment be amended from the name of William Kroger to Benjamin Kroger -

Copy of motion and affidavit. Filed 7th of January A.D. 1856 - of J. H. Kedzie -

Theodore J. Phillips
 William H. Van Wageningen
 Anthony German
 Guilian Hook &
 William McGrath
 v
 Benjamin Kroger

Cook County Court
 of San Juan - of
 January Vacation Term
 A.D. 1856

And now comes the said plaintiff by J. H. Kedzie their attorney and move that this cause be entered upon the Docket of this term and that the order made at the last term of this court in this cause, allowing the amendment of the Record the

22 Cognovit and the execution in this cause
by adding thereto the words "Nunc pro tunc"
omitted in said order

Jan 7th 1856

J. H. Hedgie
Plff. atty

Thodore J. Phillips	}	Cook County Court of Gen. Term of January Vacation Term AD 1856
William H. Van Hook		
Anthony German		
Guillem Hook &		
William McGrath		
"		
Benjamin Croger		

State of Illinois } S.S.
Cook County } John H. Hedgie of said County
being duly sworn says that he is the plaintiff
attorney in the above entitled cause, and made
a motion in the same at the last term of this
Court to amend the record, Cognovit & Execution
in this cause - that the motion was ~~verbally~~
made orally but this defendant intended to make
said motion to amend "Nunc pro tunc" and
truly believes that he did so make it in
substance, and this defendant suppresses until
after the adjournment of this Court for the
term that the said order had been so entered
of record -

John H. Hedgie

23 subscribed and sworn to before me this 4th
day of January 1856 -
W Kimball Clerk

And thereafter to wit; on the seventh day of
January in the Year Eighteen Hundred and
fifty Six - said day being one of the days
of the January Vacation term of said Court
the following further proceedings were had
in said cause and entered of Record to wit;

Charles C. Phillips William H.
Van Wagoner Anthony German
Julian Hook William M. Gault } Motion
Benjamin Croger

And now comes the
said Plaintiff by S. H. Hedgie their attorney
and enters his Motion herein that this cause
be entered upon the docket of this term
and that the order made at the last term of
this Court in this cause allowing the amend-
ment of the Record the cognovit and the
Execution in this cause be amended by
adding thereto the words "Nunc pro tunc"
inserted in said order -

Copy of Crap-mation Filed Jan'y 10, 1856

State of Illinois } ss In vacation Term of Court
Cook County } County Court of Common
Held on January 2d 1856

Benjamin Kroger
impleaded as
William Kroger

vs
Phillips & Co } And now comes the said
Defendant by his attorney and moves this Hon-
orable Court —

1st To vacate and set aside the order hact. fac
made permitting certain amendments to the
Cognovit execution &c in the above entitled
Cause —

2^d To vacate and set aside the Judgment
in said Cause —

3^d To Quash execution issued therein —

4th To Quash and set aside the whole pro-
ceedings in said Cause —

Shirley
Jy

Copy of affidavit filed 11th January 1856 of
J. C. Brown —

State of Illinois

Cook County (Ss. James E. Bowen being duly sworn doth depose and say that on the morning of the 20th day of November A.D. 1856 at Chicago - Benjamin Kroger defendant in this suit made to Thomas Shirley Esq an assignment of all his goods property and effects contained in the store north West corner of Clark and North Water Streets Chicago for the benefit of creditors -

That on the day and year aforesaid between the hours of one and two o'clock in the afternoon the said Benjamin Kroger by virtue of said assignment delivered to said Thomas Shirley in presence of the affiant the said goods property and effects in said assignment mentioned and the said Shirley as such assignee then and there took full and absolute possession of said goods property and effects and retained the possession of the same under and by virtue of said assignment - And this affiant further saith that said Shirley as such assignee of aforesaid has nearly sold all the property in said assignment mentioned according to the terms thereof for the benefit of the creditors aforesaid - J. E. Bowen
Subscribed and sworn to before me the 11th day of January 1856
Halter Knibball Clerk

Copy of J. H. Kedzie Affidavit Filed January
11th 1856 ~

Theodore J. Phillips William H. Van Wageningen Anthony German Gulian Hook & William McGrath 21 Benjamin Kroger	} Cook County Court of Common Pleas
--	--

State of Illinois } S.S.
 Cook County } John H. Kedzie of
 said County being duly sworn says that
 the only party claiming the goods turned
 in in this case adversely to the plaintiffs
 in the execution of the Sheriff is Thomas
 Shirley by who claims the same by virtue
 of what purports to be a voluntary assign-
 ment by said defendant Kroger to
 said Shirley for the benefit of his creditors
 made subsequently to the execution in
 this case being delivered to the Sheriff and
 endorsed by him with the day and hour
 of its receipt. Deponent further says that
 at the time of making said assignment
 no new consideration passed from said
 Shirley or from said Creditors to said Kroger

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But that said assignment was made only to pay debts contracted by said Kroger antecedent to the same & antecedent to said Judgment and execution —

Deponent further says that at the time of the actual levy of said execution a member of the largest creditors of said Kroger had not as yet received information of said assignment & had not at that time given their assent to the same and this deponent verily believes that the same was the case with all the creditors of said Kroger or at least all of any considerable amount —

Subscribed and sworn to John H. Kedzie
before me this 11th day of
January 1856

Wm. H. Kimball Clerk

And thereafter to wit; on the 12th day of January in the year last aforesaid — said day being still one of the days of the January Vacation Term of said Court — the following among other proceedings were had and entered of Record to wit;

Sheldon J. Phillips et al

Benjamin Kroger

Motion —
And now come the

said Plaintiffs by J. H. Kedzie their attorney
and withdraw their motion to amend ente-
red in this cause at a former day of this term
of Court, and the Cross motion of said defe-
ndant filed herein to vacate set aside the
orders heretofore entered herein and to vacate
and set aside the judgment herein and
Quash the execution issued thereon is overru-
led by the Court

Copy of affidavit of Benjamin Kroger
filed January 24 1856 -

Theodore J. Phillips v. }
Thomas Shirley }

State of Illinois } ss
County of Cook Benjamin Kroger being
first duly sworn says that at the time he made
& executed the assignment for the benefit
of creditors to Thomas Shirley on the 20th day
of November 2, 1855 he did not know that
any judgment in favor of Theodore J. Phillips
v. Shirley had been entered against him by
the name of William Kroger or any other
name in the Cook County Court of Common

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Heas n that there was any execution against him in the hands of the Sheriff of Cook County at that time & that he executed the said assignments in good faith for the purposes therein named and further says not -

Subscribed & sworn Benjamin Kroger
to before me this 24
day of January 1855
W Kimball Clk

And thereafter to wit; on the 25th day of January in the year last aforesaid; said day being still one of the days of the January Vacation Term of said Court the following among other proceedings in agreed case were had and entered of Record to wit

Shedden J. Phillips, William H Van Wageningen, Anthony German, Julian Hook & William B. McBrath	} Agreed Case
Thomas Shumley	

And now upon this day came the said parties by their attorneys respectively, and on reading the agreed case filed in this case and the paper records and proceedings in this

Court in the case of the above named plaintiffs against Benjamin Kroger and also the affidavit of Benjamin Kroger in this case, and the Court having heard S. H. Redgie of counsel for the plaintiffs and Thos. Barron of counsel for the defendant and being fully advised on the premises

It is ordered adjudged and decreed and this Court by virtue of the authority therein vested and in pursuance of the provisions of said agreed case doth order adjudge and decree that said defendant Thomas Shirley do immediately pay over to the said plaintiffs the sum of Nine Hundred and one dollar and forty cents, being the amount of the Judgment costs interest and Sheriff's fees in the suit of the plaintiffs against Benjamin Kroger mentioned in said agreed case and that the plaintiffs in this case do receive of the defendant in this case their costs and charges in this behalf expended and have execution therefor —

Copy of Appeal Bond Filed Feb. 13. 1856

State of Illinois } ss
 Cook County } Know all men by these
 presents that we Thomas Shiley Field Ben-
 edict He White & Brother, Benedict Mallory
 & Harbham, Grubb & Willmarth, Whelan
 & Sattle & J. S. Sumburger of the County of
 Cook and State of Illinois are held and
 firmly bound unto Theodore F. Phillips
 William H. Van Magoner Anthony German
 Gulian Hook and William P. McGrath
 also of the same County and State in the
 penal sum of Fifteen Hundred Dollars
 current 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 -

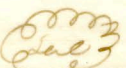
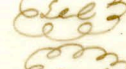
Witness our hands and seals this
 twelfth day of February in the Year one
 thousand eight hundred and fifty six -

The conditions of the above Obligation
 is such that whereas in an agreed case
 submitted to the Judge of the Cook Coun-
 ty Court of Common Pleas wherein the said
 Theodore F. Phillips, William H. Van Magoner,
 Anthony German, Gulian Hook & William

B. McGrath are plaintiffs and the said Thomas Shirley defendant it was on the 25th day of January in the year 1856 in the said Cook County Court of Common Pleas in and for the County and State of Illinois by the said Court "ordered adjudged and decreed that the said defendant Thomas Shirley do immediately pay over to the said plaintiffs the sum of nine hundred and one dollar and forty cents being the amount of the Judgment costs interest and Sheriff's fees in the suit of the Plaintiffs against Benjamin Grogan mentioned in said agreed case and that the plaintiffs in this case do recover of the said defendant in this case their costs and charges in this behalf expended and have execution thereon" from which said order judgment and decree of the said Cook County Court of Common Pleas the said Thomas Shirley has prayed for and obtained an appeal to the supreme Court of said State.

Now if the said Thomas Shirley shall duly prosecute his said appeal with effect and shall moreover pay the amount of the Judgment Costs interest and damages tendered and to be rendered

against him in case the said Judgment shall be affirmed in the said Supreme Court then the above obligation to be void otherwise to remain in full force and in the

Thomas Shirley 
 J. & S. Sturges 
 Amzi Benedict 
 Peter W. Field 
 Wm. Salter 
 Hermann Whelan 
 William G. White 
 Geo. F. Grubb 

Approved by me this 13th day of February 1856
 John W. Wilson Judge
 of the Court of Sessions of the City of New York

State of Illinois }
 County of Cook } S.S.

I Walter Kimball Clerk of the Cook County Court of Common Pleas in & for said County & State, do hereby certify that the foregoing is a full true & correct Transcript of all the papers & records of said Court in an agreed case wherein Theodore J. Phillips et al are plaintiffs and Thomas Shirley defendant, and also, that the

foregoing transcript contains full true and
 correct Copies of all the papers filed, and
 orders entered of Record in said Court, in a
 Cause wherein Theodore A. Phillips et al
 were plaintiffs and Benjamin Ayer was
 defendant; said last mentioned Cause be-
 ing referred to in the aforesaid agreed
 Case.

In Testimony whereof I have here-
 unto set my hand & affixed the
 Seal of said Court at Chicago in
 said County this 26th day of May
 A D 1856.

Walter Kimball
 Clerk

- And now comes the said Defendant by
H. E. Sledge his attorney and claims
that among other errors the Court erred
- 1st In the suit of the Plffs herein as Benjamin
Kroyer impleaded as William Kroyer in ordering
that leave be given to amend the name of William
to Benjamin Kroyer in the captioned Judgment
& Execution & Return
 - 2 That the Court erred in allowing such amendment
to be made without the payment of costs, and without
notice to Benjamin Kroyer & Thos Shirk
 - 3^d The Court erred in ~~overruling~~ the motion of said
Benjamin Kroyer impleaded as William Kroyer
to vacate and set aside the order permitting amend-
ments to captioned Record &c in said Cause and
in overruling the motion to set aside judgment in
said cause, and to quash execution ^{issued} therein
and to quash & set aside all proceedings in
said cause, which motions appear on page 24 of the ^{above} Record
 - 4 The Court erred in ordering defendant to pay to
said plaintiffs nine hundred and one dollar
eighty cents, the amount of Judgment Costs in-
terest & Sheriff's fees in the suit of the plaintiffs here-
in as Benjamin Kroyer impleaded as William Kroyer
and that Plffs recover of Defendants costs & charges

H. E. Sledge
Attorney for Deft.

And now the said dist^o came and say that there is no error in
the read and previous aforesaid, wherefore they said just
may be affirmed

By their atty

C Breckinridge

Theodore P. S.

et al

Thomas S.

112

Traverse

Witchamere 14 1856

Dele. Lincoln

Chas. B.

S. H. p. 10

1856

X

W. S. S. 1856

W. S. S. 1856

Supreme Court
June Term 1856
Theodore T. Phillips et al.

vs.
Thomas Shirley &

Defendants Brief Reply
To Plaintiffs Argument,

The facts in this case are for the most part correctly set forth in the abstract. But two things however, require correction or explanation. The motion to amend Nov. 22. p. 6, was made by the attorney of the defendant below with the consent of plaintiffs atty, & not on motion of plaintiffs atty. The agreement or stipulation referred to. page 5, is dated the same day with the amendment, & is first recited in the agreed case & abstract. It would have been better to recite the proceedings in the order in which they occurred. The stipulation shows that the amendment was made previously to entering into the stipulation, as the latter purports to be in the case of "B. Kroger"

And not Mr. Rogers.
~~One other thing I will explain which~~
~~might not otherwise be under-~~
~~stood.~~ The abstract where it
refers to page 21, would seem
to convey the idea that the a-
mendment was made Jan,
y^r. 1836. This of course would be
a mistake. The amendment
ought to have ^{been recited} ~~been~~ in its
order before the stipulation.
One other thing I will explain
which might not otherwise be
understood. The abstract shows,
referring to page 23, that on the 4th
of Jan. plaintiffs below moved that
the words inure pro tunc be added
to the original amendment, made
at the preceding term. The Court
suggested that, inasmuch as the
amendment was made at
the same term of Court with
the entry of judgment, it could not
be inure pro tunc, that phrase only
referring to a proceeding at a sub-
sequent term. To take effect as
of a previous one. Whereupon
the motion was withdrawn.

I shall now follow the plff through the different heads of his argument, noting his divisions & subdivisions, as well as his language, when cited, by quotation marks. Where I give the language of authorities also, it will be under quotation marks.

"II." This is an admission, which is good as far as it goes. This is perhaps as far as the plff. could safely go, ~~though~~ as he would not like to admit our whole case in his first sentence. I will show however that this admission does cover our whole case, as the amendment was made with his consent, and no rights of third parties could intervene in the interim,

"1." The plff. denies that the attorney for the deft. in the Court below, acts as an officer of the Court. All attorneys when acting as such, are officers of the Court. And the Court will correct their mistakes just the same as it would the mistakes of the Clerk or any other officer. This applies as much to attorneys appointed by warrant of attorney

as to any other. See *Close vs Gillette*
3 Johns, Rep. 326-7.

"2" "That up to the time of the judgment there was no judgment against Benj. Kroger." This assertion is without authority to support it and is untenable, the name is correctly given in all the papers and proceedings constituting the Record in the case until we come to the Court's. The first departure is in the debt, own pleading. In *Conrad vs. Giffing* 11 Howard U.S.R. 480, the Court say, "The judgment runs against Daniel Frederick Conrad, when the writ, pleadings and contract speak only of Frederick R. D. Conrad, the defendant. The name prefixed as defendant in the judgment, may well be rejected as surplusage after verdict and judgment, when the true name has been well described in the writ, and pleadings. The statute of jeofails clearly cures the defect, when it can be ascertained who the defendant is." *Newcomb vs Beck*, 17 Term, 302. "A judgment rendered against a defendant, omitting his Christian name, cannot be considered as void, but an action may be maintained against him on such judgment, averring his identity."

See also *Pondero v. Mosely*, 3^d Florida 207.

"3"

"The suit or judgment was docketed against *Wm Kroger &c.*" The suit, it is true, was docketed on the docket for the term against *Wm Kroger*, but the judgment was not docketed until after the amendment, & was then docketed correctly. The amendment was made at the same term of Court at which the judgment was entered. Therefore the judgment docket was made up.

Creditors & others could not know at all that there was a judgment against either *Bey*, or *Wm. Kroger*, except by examining the proceedings in the case when they must have known that the judgment was intended to be against *Bey*, *Kroger*.

Our view does not depend upon the fact whether other parties had notice or not but even if it did, all parties had constructive notice, as one part of the record is as much a notice as ~~the~~ another, and especially, the part that is correct, where the proceeding clearly show which part is correct & which erroneous. In *Mosell's Book* 31 Maine p. 20. Before the execution was amended, the lands levied upon were sold to one ignorant of the levy. "Per Curiam", "The defendant purchased the land subject to the ~~levy~~ attachment, and the rights that might flow from it."

We might have known from the
record & proceedings, that the title
acquired by the plaintiff under the
levy would be complete when the enis-
sion should be supplied."

"4" "The powers of an attorney under a power of attorney
are special & definite &c." This is true as
a general proposition relating to acts
in pais by an attorney in fact, but
I have yet to find any authority showing
that an attorney retained in a suit
commenced or to be commenced, by
writing or warrant of attorney, has
less power & discretion in that par-
ticular case than if he had been
more loosely retained on terms,
The powers of the warrant of attorney
extended to the Confession of a valid
judgment against Benj. Kroger and
could not possibly be exhausted
until that object was fully accom-
plished. If the powers of the warrant
were exhausted by the signing of the
Confession, then the judgment was
a valid one. If the judgment was
not valid, then the warrant of at-
torney remained in force until
a valid judgment should be en-

tered by virtue thereof. In what way
could the Attorney ^{more} ^{appropriately} act under the
warrant to reflect a valid judgment
~~than~~ by amending the irregularity?
There is nothing in the warrant or in the
nature of the case, requiring that all
the powers of the warrant should be ex-
ercised at one & the same time or in
one single act, but they remained in
force until fully and effectively ex-
ercised.

Again both the statute & the warrant
itself waive & release all errors in ex-
ecuting the warrant. And
finally, this error, if error it be, is not
assigned & cannot be used in this case.

"5" This objection is fully answered under
the last head. If however the Attorney
Nichols had not bound his principle that
by signing the cognovit, the more reason
exists why he should do so by amend-
ing that Cognovit. In the case already
cited in 3^d Johns. p. 526 & in very many
other cases hereafter cited, the judgments
amended had been entered by virtue
of a warrant of attorney.

"6" Under No. "2" I have shown that the judg-
ment was not void. The same is shown
by nearly every case cited in this argu-
ment, as "void judgment" would
be a nullity & could not be made val-

it by any amendment,

"7" This so much professes to give a reason for what precedes it. A valid declaration was on file against Bay, Kroger and also a warrant of attorney authorizing any attorney of a Court of Record to collect a judgment upon it. ^{Execution} Is there any further consent necessary to authorize the respecting of the judgment? and the issuing of the execution?

"8" It is a sufficient answer to this to say that We insist that the judgment was not void. We have already shown (11 Howard U. S. R., p. 480) that any name prefixed to "the defendant", where the defendant had been once rightly named, might be rejected as surplusage, the judgment remain good against "the defendant". ^{so-nomine} I think no authority can be found for pronouncing such a judgment void. Certain it is that authorities, overwhelmingly numerous, including our own State Reports, show that such a judgment is not void, but merely irregular & amendable at any time even after the lapse of 20 years. (Hornbford vs. Mead 12 Mod., p. 384) but especially at the term at which judgment was entered. See 11 Ill., p. 515; 3 Leam., p. 149; 2 Virg. Cases, p. 527; 1 Hurl., p. 278 & c.

"4th" "If so, then so". To which I reply, If not so, as I have endeavored to show, then the conclusion will not follow;

"II II"

Nos. "1" & "2" under this head purport to give the facts in this case on which I would simply remark in this place.

1st This Court can take no notice of an assignment that is not presented to the Court, & certainly cannot infer the existence of a sealed assignment, the validity of which was one of the questions submitted to the Court below. But more of this hereafter.

2^d Kroger swears that he has no actual notice of the judgment. Very few people indeed have actual notice of judgments entered against them by confession or a warrant of attorney, until they are waited upon by the Sheriff with an execution.

This however does not detract from that constructive notice to all parties, which is to be found in the Record & proceedings, and which is usually all the notice that any one has of a judgment by confession, until after the lien is filed.

3^d The execution was issued on the 16th of Nov, was delivered to the Sheriff & the time of delivery indorsed at 9/4.

A. M. of said 20th of Nov, before either the assignment or delivery of the goods to Shirk,

"3," "We insist these goods, under the assignment were bona fide in the hands of the assignee as trustee for the creditors &c." reverse
He, in reply, insists on the very ~~con~~ ^{reverse} ~~ten~~, even if there were a valid assignment (which the Court will not gratuitously assume, and for disbelieving (which, I will shortly give the best of reasons,) still, I take the position that Shirk was not, and could not be, a bona fide purchaser. This is abundantly settled both by authority & on principle. For authorities I need only cite Willis & al. vs. Henderson 4 "Searl, 19 Powell & al. vs. Jeffries & al. " " " 390, in both of which cases, not to cite others, it is clearly laid down that an assignee for the benefit of creditors is not a purchaser in good faith, as against any one except the assignor.

The reason is equally obvious, 1st neither assignee nor creditors part with anything valuable on the occasion, 2^d no new consideration of any kind, nor in fact any consid-
eration at all, passes at the time

of making the assignment,
3^d The creditors have placed them-
selves in no worse condition in any
respect in order to obtain this as-
signment. All they had before
all they ever contracted for, viz; the per-
sonal responsibility of their debtor,
they have in full force and virtue.
While the plaintiffs below, Phillips Co,
got no more than they had contracted
for, viz. a judgment & execution by
contract as a superior security for
their debt, (See *Hart vs. Reynolds*,
3 Cow. 42 note) which entitles them to a
just preference over simple contract
creditors,

4th Non constat, but that even now the assigned goods
are sufficient to satisfy the assignment creditors,
after paying the judgment of defendants,

5th That the assignee for the benefit of creditors
stands in the shoes of the assignor, has no su-
perior rights over what the assignor would have
had, and can object to no amendment that
the assignor could not with equal propriety
have objected to. If therefore the
amendment is good against
Kroger, it is equally good against
his assignee,

"4" "No such amendment will ever be allowed as will impair the rights of third persons";

This proposition is very far from being good law, without several important qualifications.

On the contrary, I will assert and undertake to prove the rule to be that matters of form & clerical errors (including mistakes of attorneys as well as all other officers of the Court) may be amended at any time & especially ~~at the same~~ ^{during the} term at which judgment is entered, notwithstanding that such amendments affect the rights of third parties. And even where the amendment is of a matter of substance, the amended proceeding ~~and~~ prevails ~~as~~ against voluntary assignees and other judgment attaching creditors whose rights have attached in the mean time, and all others except actual purchasers in good faith, who have actually paid their money or other valuable consideration for the goods.

The above propositions I will establish by authorities, but I must first dispose of the authorities here cited by the plaintiff.

1st The case in 14 Johns. 219.
I remark in the first place, that this case is a good authority in favor of the power of the Court to make amendments,

The amendment in the case before the Court does not go anything like the length of introducing a new defendant who had not appeared at all in the proceedings.

In the second place, the case in 14 Johns. only protects ~~the~~ ^{bona fide} interest ~~of~~ ^{bona fide} ~~creditor~~ ^{creditor}. I have already ^{in answer to} ~~made~~ No. "3" under "II II" of plaintiff's assignment shows that an assignee for the benefit of creditors is not a bona fide purchaser.

In the third place, the amendment in 14 Johns. was made at a subsequent term, the rights of third persons might well intervene between the date of the judgment & the granting of the amendment. In the case before the Court, the amendment was made at the same term while the case was yet in Court. ^{no} rights could possibly be acquired to the prejudice of the plaintiffs below, Phillips & Co.

In the ~~the~~ fourth place there is no resemblance between the facts in the two cases. In the case in the 14 Johns. there was not a single word, syllable or letter of the name of the defendant Samuel Smith in the record, nor in any of the proceedings, ^{not even in the warrant of attorney} nor any name intended for him. Note was not a part to the proceeding either by a right name or a wrong one. There was not even anything

by which it amended the record, but they are pretend that the case in 14 Johns, is parallel with the one before this Court, where there was simply a mistake in a part of the proceedings of the Christian name of the debt, which was rectified before the case ever went out of Court?

I will next consider the case of *Sole vs Brompton* 1 Wils. 61,

1st This Application was 12 years after the date of the judgment, the refusal ~~to~~ to amend was placed on that ground & it is very clearly intimated that had the Application been made at the same term, as in the case before this Court, it would have been allowed,

2^d Another ground for denying the amendment was that it might affect (bona fide) purchasers. I have shown that there are not & cannot be any bona fide purchasers in the case at bar.

3^d Another ground for denying the amendment in 1 Wils, was that no case had gone so far. On this the Court were mistaken, this case was decided at C.T. 1743. Before that time the following cases had been decided, viz;

Morearth's case, E.T. 1671. 1 Vent. 217,
Tully vs Bail of Terasor M.T. 1706, 11 Mod. 139,
Brown vs Hammond E.T. 1738. Barnes 10,
Graddock vs Ratford M.T. 1693 4 Mod. 371

Hanckford vs. Mead E.T. 1699. 12 Mod. 384.
All these cases were antecedent to
the case of Sole vs. Grompton. They are
succeedingly instructive and cases
in point. I hope the number of
my authorities will not prevent
the Court from examining all of them
or at least until the Court be-
come satisfied.

In the case of Sole vs. Grompton, both
upon principal authority, the de-
cision ought to have been different,
the amendment allowed, saving
perhaps the rights of bona fide pur-
chasers without notice.

At all events, the later decisions must
prevail over the earlier, and the
case of Sole vs. Grompton is overruled
by

Mackie vs. Smith E.T. 1812. 4 Term. 332

Moody vs. Stracey T.T. 1812. " " 388.

In the last case the mistake was in
omitting the letter "t" in the name ~~Stracey~~
Stracey. It was of course amended.

In the case of Sole vs. Grompton, the
mistake consisted in the omission of
the letter "r" from the name Grompton.
Can any ^{valid} reason be ~~alleged~~ why
the letter ^{supplied by amendment} "t" can be ~~amended~~, but
not the letter "r"?

The case of Mackie vs. Smith is interesting
as showing that an execution, in which
there is a misnomer, may be amended
while in the hands of the sheriff.

The other case is that of Zimmerman
v. Briggs 5 Watts 186,

This case rests wholly upon
the two cases last reviewed, &
if I have effectually disposed of
them, this would share the same
fate. I will remark however
for that this case is not parallel
with the one at bar. In the case
in 5 Watts the application to a
warrant was not made, as in the
present case, while the case was
before the Court, but after the
Court had adjourned the Sheriff
had made the wrong. How many
tenants had escaped I cannot tell.
Then, whether the case in 5th
Watts be good or bad law, or
whether founded on good or
bad precedents, that decision
cannot control the case at
bar, the facts not being the same.
I not only is the decision in 5th Watts
unsupported by valid authorities, but
I shall proceed to show by an over-
whelming array of authorities
that it is not good law.
For this purpose I need only
refer to the authorities already cited.

In addition to these I will now
call the attention of the Court to
the following, viz:

State vs. King 5 Smedl. 203

Calby vs. Neovey, 1 App. 111.

"All records may be amended in
furtherance of justice, according to
the truth, and it is no objection
that a suit only commenced be-
fore such amendment will thereby
be defeated;"

Nicholtree vs. Gorks 1 Seaw. 122,

5^a Smedl. 12, 3^d Smedes & Marsh,
234,

St. Rins vs. Hinman 2^d Gl. 446, 451

Clomer vs. Mullen 11 Ill. 59,

Seaman vs. Drake 1 Conn. Rep. 9

Mara vs. Quin 6 T.R. 8.

Hart vs. Reynolds 3 Bar. 42 note,

Jackson vs. Young 1 Cow. 131

None of def^t. omitted in misc'
prior record. After Cien't motion
to amend, Per. Cur. "The motion
to amend is granted".

Smith vs. Fuller 1 Ld. Raym. 116,

Robaseo vs. Robaseo, 2^d Penningtons

N. J. Rep. 1012, "Judgment was
entered up in the name of George
in lieu of Garret, many years since"

Motion to amend.

Reid Patrick C. J. "I am of opinion
the amendment ought to be made."
Perrington, J. "It appears to me
the current of authorities for two
Centuries back, are in favor of the
amendment."

Bank of Kentucky vs Lacey 1 Mon. J.
Marsh vs. Berry 17 Cow. 344.

Brooks vs Hatch 11 Deall 321. 325.

Lake vs Nurse 11 Ill. 589.

Moff vs Hart 13 Ill. 571.

Especially have Courts the right
to amend their records at the
term at which judgment is
rendered.

Stohl et al. vs Webster et al. 11 Ill. 515.

Minick et al. vs. King 3 Seam. 149.

Keall vs. Williams 1 Harf. 278

Commonwealth vs. Carwood. 2 Ky. Cases 57.

And the same is true, notwithstanding
that the rights of third parties
will thereby be affected.

Close vs. Gillespie 3 Johns. 526, before
referred to, is a case in point. So
Norrell vs. Cook 31 Maine 120 before
referred to.

Green vs. Cole. 13 Deall 430-431.

Evans vs Adams. 3 Green (not Greenleaf) 373.

"A judgment, if merely irregular is binding upon everybody but the defendant. Another judgment creditor against the same defendant, cannot take advantage of the irregularity."

8 Hults & Sarg. 378.

Let quantum sufficit. Another authority which I expected the plff. to cite, but which he has not done, is 7 Greenleaf 146. In order to leave nothing unexamined which could be supposed to ^{indicate} bear on the case, I will ~~state~~ ^{indicate} a few points of difference.

1. The application in 7 Greenl. was made 6 years after rendition of judgment.
2. Amendment was sought to the prejudice of bona fide purchasers. We Court now understand what I mean by "bona fide purchasers."
3. It was in relation to a matter of substance, not of form.
4. It was a part of a series of statutory proceedings for acquiring title to real estate, and must be pursued strictly. The refusal

was placed on that ground,
5th There was nothing to amend by
but the memory of the officer,
after the lapse of six years,
6 The officer making the amend-
ment was now out of office,

"5" "The Creditors under the assign-
ment are as much entitled to
favor & protection as the judg-
ment Creditors, when the as-
signment is fair, & in this case
~~there is~~ it is not pretended the assign-
ment is unfair."

Before answering this I would re-
mark that my Brother Grover's
was not in the case below & prob-
ably had no knowledge of the facts
that will appear.

I would say then, while I neither
affirm nor deny the existence of
fraud in fact in this pretended
assignment, that question not
being presented by this record,
I certainly do claim that it is
fraudulent in law so as against
Phillips & Co, & other creditors,
I must here refer to my affidavit
filed in this Court,

The language used in said assign-
ment is almost word for word
identical with that employed in
the assignment in Burdick vs Post
12th Barbours 168 & there pronounced
void by the Statute of frauds.

To the same effect is Barnes vs,
Griffin 2^d Courtstock 363, &
MacLam vs Stearns 9 Page 405-6.

In these cases, which have not
been overruled, the doctrine is
thoroughly discussed and settled
on principle & authority.

Now can there be a doubt but that
the assignment from Kroger to
Shirley is obnoxious to this charge.

No one acquainted with the force
of the English language can doubt
but that the assignment gave the
power to sell on credit. It says

"on such terms & conditions as in
his judgment may appear best
concerned
+ most for the interest of all parties, and
convert the same into cash";

If the assignee had only been authorized to sell for cash, then there would have been no option or choice nor discretion as to the terms of the sale. There would have been but one condition, that is for cash; neither would there have been any subsequent process necessary of converting the same into cash. The sale itself, would have been a conversion into cash.

But it will be replied to this that the affidavit filed in this Court is no part of the Record and that the Court will take no notice of an argument based thereon, Grant it. But if this be so, a fortiori, the Court will take no notice of the existence of an assignment that is thus carefully, if not fraudulently, excluded from the Record withdrawn from the consideration of the Court. Must assuredly, this Court will not infer the existence of a valid assignment, which is not before the Court at all, especially when it ~~was~~ is the right of

the defendants to have that assignment presented to the Court, and its validity passed upon by the Court. The "agreed Case" states, "It is agreed that the papers in the case of Phillips et al, vs Kroger, and the judgment record, docket and the assignment to said Shirls, may be referred to by either party, and form a part of this case;" Also,

"The validity of said judgment, execution and proceedings, as well as of said assignment, are submitted to this Court."

How can the defendants in this Court refer to said assignment when it has ~~been withdrawn from the files~~ never been filed in this cause nor made a part of the record in the case? And how is this Court to judge of the validity of an assignment they have never seen? How constant but that the plaintiff was defeated below on the very ground of the invalidity of the assignment,

Of one thing I am well assured, that is, that the Court below would have pronounced said assignment void, had it not been unnecessary to rest upon the assignment at all, by accident that the plaintiffs below had acquired a valid first lien by the judgment & execution, which would be good against any subsequent assignment whether void or valid.

It may be answered that the agreed case admits the existence of the assignment, I reply that the agreed case nowhere admits the validity of the assignment, but on the contrary shows clearly that it was questioned, by agreeing to submit the question of its validity to the Court. The case only admits the existence of the assignment in connection with a solemn agreement to produce the same to the Court. To allow it to be referred to by either party, that it should form a part of this case, specially that the validity question of its validity should be submitted to the Court.

Can the Plaintiff in this case await himself of such an admission of such an assignment, while he at the same time violates every provision in the agreed case by deliberately excluding the Record from the Record of the Court?

What is the necessary consequence of this course of procedure in the part of the plaintiff?

He has undertaken to bring this case into this Court by appeal. It was his duty to have taken the ~~proper~~ ^{proper} exceptions & the subsequent steps requisite to have the assignment incorporated into the Record.

See Mapes v. Hunt et al, 13 Ill. 572.

Carey vs Russell 3 Ill. 367

Edwards vs. Patterson 5 Ill. 126.

Magher vs. Howe et al, 12 Ill. 380.

Having failed to do so, this Court is utterly unable to judge of the propriety of the decision of the Court below, and in the absence of the testimony produced before that Court. This Court must presume that the Court below decided correctly.

It is too late now to retrieve the error, by proancing the assignment to the Court. There could be no identification of the instrument.
Map v. Flint et al, 13 Ill, 572.
Watch v. Patten, 2 Gil, 727 & 8,

"IV"

"In our State, goods seized under an attachment are as effectually held as if seized under an execution."

This is unfortunate, whether intended as an argument or an illustration. All attachment proceedings are amendable in our State, and judgments in attachment suits are amendable every where, when there is anything to amend by. Amendments in a name may be made, even in writ, without losing the lien.
Wight v. Hale, 3 Cranch, 486.

"A writ on which an attachment of property has been made, may be amended by substituting 'Wight' for 'Wright' as the name of one of the plaintiffs without vacating the attachment,"

in my opponents argument
"1" As to what follows in regard to
amending declarations the author-
ities cited in that connection, it is
sufficient to say,
1st That the doctrine belongs ex-
clusively to the local New England
Statutes relating to attachments, &
2^d That those cases bear no re-
semblance to the one at bar, as
this is not in New England, It is
not an attachment suit, nor
was it a declaration that was
the subject of the amendment.
"On like principle &c." The "principle" here
referred to by my opponent, is, that
under the Attachment Statutes of the
New England States, amending the
declaration in a matter of sub-
stance postpones ^{of the attachment} the levy. I have
already shown that the principle is
not applicable to the case at bar.
Neither can any analogy be drawn from
cases that are not analogous to apply
to the amendment of judgments and
executions. Especially when the au-
thorities bearing directly on the subject
and not simply exhibiting it by
analogy, are almost innumerable.

The authority in 5 Watts here quoted
has already been disposed of,
"Now the Creditors by the assignment
& possession. &c."

That depends entirely upon
1st Whether the assignment was
valid or not, (This Court has no
evidence of a valid assignment.) &
2^d Whether the defendants in this Court
had not got a prior lien by their
judgment execution delivered
to the Sheriff & indorsed by him as
received prior to either the
assignment or the delivery of
possession under it.

"3^d" "If the Creditor had mortgaged his
property &c. before any valid execution
had issued &c." This proposition of
my opponent needs a qualification.
A ^{prior} valid mortgage or assignment with
delivery of possession, would be good
against any ^{subsequent} execution whatever,
whether void or valid, or even if
the execution were prior to the mort-
gage or assignment, but was perfectly
void, the goods would still be
held by the mortgage or assignment,
because a void execution is a nullity,

But if my Opponent wishes to be understood as saying that the lien of a prior execution, affected with some unavoidable defect or irregularity, is destroyed in favor of a subsequent mortgage or assignment, then he takes a position that is borne down by the whole current of authorities for centuries. Executions have been amended by the Courts, and particularly in regard to names. — while in the hands of the Sheriff before levy — after levy before sale — after sale before return — after they have been returned in some cases after they had almost been returned to dust by time, — in collateral proceedings — and after error brought. These amendments too, were not made for the mere form of the thing, but to make valid by retention &c proceedings that would otherwise have been invalid. And that too, as affecting the rights of third parties. for no one would be at the trouble to amend proceedings that no one could possibly take advantage of.

If more authorities are

these creators. I could show that
some of them at least have other
good security. I do not know
but the same is true of all of them.
The Court is to receive nothing but
what is in the record & there is cer-
tainly nothing in the record to
show that the Creators have been
prejudiced by ~~the~~ the mistake.
I have here, as well as in one or two
other places, hinted at ~~the~~ facts out
of the record, not for the purpose
of showing that such are the facts,
but only to show that such may be
the facts in the case,

"3" "The judge, of Phillips Co. in this case is entitled
to no great favor. &c." ~~The~~ My op-
ponent has misread the record &
is entirely mistaken in relation to
the facts he here relates. The note
was not given on the 16th of Novr.
but on the 10th of Sept. previous,
judgment was not entered until the
the note was fully due & days of grace
expired. The clause in the power of
Attorney authorizing entry of judgment
at any time after date. was not
acted upon & I will venture to

say that Brother Goodrich was
the first man to discover its ex-
istence, I certainly did not know
of it till my attention was called
to it by the plaintiffs argument,
It is not true however that this
judgment is not entitled to
favor. I said that it is especially
so. By contract between the par-
ties. Phillips & Co. were to have the
security of this judgment. This was
the condition upon which the ori-
ginal credit was given, or an
extension granted. To deprive them
of the benefit of this judgment
is not only to deny them their legal
rights under the judgment execution,
but to deprive them of the rights
secured to them by previous con-
tract. Instead then of regarding
this judgment with disfavor, the
Court will go to the very extreme of
its power to secure to these assign-
ants those contract rights, which the
other creditors did not see fit to
demand or had no right to demand.
In this connexion, as enforcing the above
view, I would call attention to the case

of *Wart vs Reynolds*, 3 Cow. 42, note,

"V" "Kroger only authorized his atty.
to enter a judgment, but not
in his name to consent to any
amendments of judgment," &c sequente,
This objection I have fully discussed
before, If enough was not then
said I will give an authority which
will be a clincher

Bulch vs. Shaw, 9 Cranch, 282.

"Courts of Record have power at any
time, as well after as during the term
at which any entry is made, of their
own motion, or on suggestion of any
party interested, and without notice to
any one, to correct the mistakes
and supply the omissions of their
clerks or recording officers" (3 Johns.
526 shows that attorneys are included
the same as other officers) "so as to
make their record conform to the
truth of the case, and are the ex-
clusive judges of the necessity &
propriety of so amending and ex-
tending their records, and of the
proofs and the sufficiency of
the proofs on which to proceed."

As to the authorities in relation to adding new parties, it is sufficient to say that no new parties have been added or attempted to be added in this case,

"VII" This head appears to be a repetition in another form of the same idea advanced in to "V", and has already been twice answered. Without repeating the authorities already quoted, or adding others, I will simply say that the whole current of authorities show that formal defects of this kind will be amended at any time, with or without notice, and it is totally immaterial whether it be on motions of plaintiffs atty, or defts. atty, or no attorney at all. If, however, it were necessary to meet this objection with a new ~~argument~~ answer, every time that it is urged, I would recommend my opponent of what he has probably forgotten: viz, that Saint Kroger died on the 10th day of January, ¹⁸³⁶ appear in this cause by an attorney, whose authority Mr. Goodrich will not deny, viz. Thomas Shiley.

that he then moved the Court
to vacate the order allowing the
amendment; to vacate what
set aside the judgment; to quash
the citation & to quash the whole
proceedings! Now where an
amendment is made originally
without any authority, not even ^{with} the
~~permission~~ ^{consent} of the Court, overruling
a motion to set aside such an
amendment, makes it a
valid amendment, even where
it was not so originally. There
are authorities directly to this
point, but I do not deem it
necessary to cite them. This a-
mendment then, was confirmed,
which is tantamount to its original
allowance, while both the apt. Kroger
& the assignee, Shirley, were in Court
in opposition to said amendment.
I have now followed the plaintiffs argument
through to its close, and have said
nearly all I deem it necessary to
say in this case. The main ques-
tion is not in regard to the propriety
of the amendment or the power of the Court
to make it, but whether or not the amendment
when made can affect the rights

third parties. I am willing to concede
that where a new name not before ap-
pearing in the record, as in the case in 14
Johns, or even where the name was
uniformly wrong from first to last,
so as to bear the appearance of being
a different person, as in the case in
3 Watts, ^{the} judgment & execution
would not be good as against sub-
sequent bona fide purchasers without
^{that I mean by bona fide purchasers I have before expressed}
notice. But where the name is
once correctly given, especially in
the first proceeding in the case, fur-
nishing the means to amend by,
and particularly in this case, where
the note, warrant of attorney &c,
clearly showed which was the true
name, the mistake in the subse-
quent proceeding was the mere
clerical error, which in any court
would be amended, as soon as
discovered, without prejudice.
Indeed, an authority already quot-
ed goes so far, properly, as to say
that the name prefixed to the
defendant, after the defendant
has once been correctly described,
might well be rejected as sur-
plusage: the word defendant always

hereafter referring to the name by which
he first appears in the record.

What further I have to say I shall
do so briefly under the following
heads, viz:

1st The plaintiff in this Court has
not a single leg to stand on in
consequence of omitting to have
his assignment properly in-
corporated into the record. The
Assignment constitutes the sole ground
on which he can lay any claim to
the goods or their proceeds in op-
position to the defendants Phillips
& Co. This not being before the Court,
the Court can form no judgment
as to the validity of his claim.

No objection has ever been taken
to the order allowing the amendment.
In fact, it was made on ^{the motion of} Krogers
then attorney, Nicholes: nor was
any exception taken to the overruling
of the motion by Krogers attorney
& assize. Shibly, to vacate the
amendment, set aside the
judgment, quash the execution &
proceedings. ^{as to the final decree in the suit below} In Hill vs. Ward
2^d Gil. R. 293. the Court say.

"It needs no argument nor authority to prove, that a party cannot be permitted to assign forever in this Court any ^{decision or} opinion of the Circuit Court made or expressed during the progress of a cause, in the propriety of which, at the time of its occurrence, he silently acquiesced."

3^d Whatever may be thought of the propriety of allowing this amendment originally, it must be conceded that it was wholly discretionary with the Court below, and that its decision cannot here be assigned forever. I will not ask the Court to examine authorities upon a point so obvious, I will however simply refer to a few ^{among} many that might be cited, *Means vs. Rogers* 1 Kelly 463
Warren vs. M^r Hutton 2^d Seam, 33.
Lansing vs. Birge, " " 325,
Batch vs. Shaw, 7 Cush. 282,
Austin vs. Jordan 3^d Texas 130.
Phillips vs. Dana 1 Seam, 498.
Safford vs. Keenan, 2^d Kelly, 341,
Ballance vs. Curlewis, 3^d Kelly, 449,
Yoon vs. Doney, 1 Ell, 441,
Stewart vs. Bennett 1 Branch 437.

4th The amendment, when made
retates back to the date of the
original transaction, and the
amendment proceeding has the same
force and effect as if it had
never been defective,

Almost every amendment ever
made shows this, as that ^{is} ^{in general} the
sole object of making amend-
ments. See.

Andrew v Roberts 18 Ala. 387,
Whiting vs Beebe 7 Ind. 535
Dun v Leary Case 111,
Heath vs Whidden 29 Maine 108.

It mistakes of this kind,
which occur much more frequently
than is generally supposed, could
vitiate fatally a record, very few
indeed would be solid,

It is an amusing circumstance that
in each of the only two reports I
have found of The Great Case
of Sole vs Blompton, on which
all of the plaintiffs authorities
rest, there is an unintentional
misnomer, in one case of the plff,
& in the other, of the deft. My
friend Goodrich himself, in

citing the case has misnamed the
party. His argument, to which I
am now replying, contains palpable
mistakes of fact, witness
his mistake in the date of the
note ^{sewarrant of attorney, & entering}
^{judgment before the note became due}
the printed abstract of this case
is not free from mistake, and
had I not watched the Clerk
of the Court below in writing up
his record, it would have read
"Thomas F. Phillips" instead of
"Theodore F. Phillips," besides
mistakes in dates.

To pronounce a record void
on account of clerical mistakes,
mere lapses of the pen, which
occur in almost every record,
would be to re-inaugurate all
the follies, absurdities & mis-
chiefs, which the statutes of Je-
fairs and a long course of de-
cisions by liberal & enlightened
Courts, were designed to re-
move.

I can see no reason why the dam-
ages on the affirmation of the de-
cision of the Court below, should
not be the maximum

allowed by Law,

J. McKeuzie,
Genl. Secy. in Amer.

113

Supreme Court

Thos. Phillips

and

Thos. Shill

vs

E. B. Wagoner

Filed July 3. 1856

L. Leland

Clk.

Ottawa Aug. 18. 1856.

Hon. C. T. Skinner

Dr. Sir

Enclosed please
find a copy of corrected abstract in the case
of Shirley vs Phillips et al. Mr. Kedzie sent
me four copies requesting me to file them
among the papers in the above named
case. As I do not understand ^{from his letter} what he
means I send one copy to you. The others
are on file here. He seems to expect a
re hearing—

Yours Truly
L. Selous
By J. B. Rice

Supreme Court
of this Term 1836

Thos. Shiley

vs
Thos. F. Phillips et al } No. 112,

List of Repts authorities to
be cited, in argument of this
case, viz;

Kulcherson v Broet 10 11, Mass. 121, ✓

Killer vs Metzger 16 Ill. 393 ✓

State vs. King 5 Ind. 203 ib. 12 ✓

Smith vs Branch Bank 5 Ala. 26 ✓

Nichols vs Sparks 1 Tenn 122 ✓

4th Ala. 432, 9 ib. 99 ✓

3 Smead vs Mark 234, Conn. 64 ✓

Atkins vs Haiman 2 Ill. 446 ✓

Chomier vs Mullen 11 Ill. 39 ✓

Seaman vs Duke 1 Conn. Rep. 9 ✓

Mara vs Quin 6 Term R. 8 ✓

Wart vs Reynolds 3 Conn. 42 note ✓

Morse vs Sewey 3 N. Hamp. 533 ✓

Phelps vs Ball 1 Johns. Cases 31 ✓

Coleman 66 ✓

Treasurers vs Bordeaux 3 N. York 142 ✓

Porter vs Goodman 1 Conn. 413 ✓

1 Mem. of Bank of Kentucky as Lacey ✓

3 Johns 144 ✓

White vs Lovejoy " 448 ✓

Wesman vs. Penrod Breese Apprais 16
Wanckford vs. Mead, 12 Mead, 384,
Jackson vs. Young 1 Cow, 131
Smith vs. Fuller 1 Ld. Rym, 116
Mumfords Case 1 Vent, 217
Prohuseo vs. Prohuseo, 2^d Penn. Mf, 1012
Courad vs. Gipping 11 Cow U.S.R. 480,
Murd as Berry 7 Cow, 344,
Brooks vs. Rutchiff 1, Ind, 321
Mop vs. Hunt et al 13 Ill, 371
Lake vs. Woods et al, 11 " 389
- Stahl vs. Motters et al 11 " 313,
Hunt et al, vs. King 3 Seam 149
Commonwealth vs. Cawood 2 Ky Cases 52,
Hall vs. Williams 1 Harp, 278,
- Murrell vs. Cook 31 Maine 120,
Close vs. Gillespy 3 Johns, 326,
Green vs. Cole 13 Ind, 421, - 403,
Colby vs. Moody 1 App, 111,
Wright vs. Neal 2 Cusk. 480,
Evans vs. Adams 3, Gen. Mf, 370,
8 N. H. L. 387,
14 Johns, 319
Anurup vs. Roberts 18 Ala, 387
Whiting vs. Beebe 7 Ind 421 - 330,
Oliver vs. Leary Boyle 111,
Stephens vs. White 2 Wash, 203,
Utica Ins. Co. vs. Scott, 6 Cow, 606,

6 Am. Com. Law, 253,

3 Chanc. 232,

3 Mand. 112

9 Bing. 125,

Hallen vs M Walton 2 Seam, 33

Gause vs Binge " " 375

Baleh vs Shaw & Co 282,

Austin vs Jordan 3 Tex. 130,

Phillips vs Dana 1 Seam 498

Carey vs Russell 3 Gil. 367

Edwards vs Patterson 3 Gil. 126

Mop vs. Frink et al, 13 Ill, 372,

Will's et al vs Henderson 4 Seam. 19

Powell et al vs Jeffries et al " " 390,

Burden vs. Post 12 Barb, 168

Barnes vs. Griffin 2 Const. R. 365

Macham vs Stearns 9 Page 405-6

& Greenleaf 146,

Prater vs Moody 2 Thoma 207,

Newcomb vs Pick 17 Term, 302,

Mogher vs Howe et al, 12 Ill, 380,

Hill vs Ward 2 Gil, 290,

Wans vs Rogers 1 Kelly ~~344~~ 463

Saffold vs Keenan 2 " 341

Ballance vs. Brittain 3 Gilman 449,

Gordon vs Downey 1 Gil, 41

Stewart vs Bennett, 1 Branch 437,

McKee

for Sept in Arer,

¹¹²
Supreme Court

Phillips et al,

vs

Thos. Shively

Dist. Ct. of
Arkansas,

Filed June 30, 1852

L. Leland

Clerk

says that at various times since the
 argument of this Cause in the Court
 below he has conversed with the plain-
 tiff in error and his attorneys and used
 them to have the said assignment
 or a copy thereof incorporated into
 or attached to the record sent up to this
 Court. but they have declined doing so,
 Subscribed and
 sworn to before me } Jo. L. A. Keazie
 this 28th day of }
 June 1836, }
 Walter Kimball Clerk
 of Cook County Court of Common Pleas

112
 Supreme Court

Wm. J. Phillips, scd

ad

Wm. J. Phillips

Attorney of
 J. L. Keazie,

Filed June 30, 1836
 L. Leland
 Clerk

Chicago Aug. 4th 1836

Hon. C. C. Miner

Dear Sir,

Enclosed herewith I send you a Petition & exhibits for a re-hearing in the case of Shirley vs Phillips & al. You will see by the transcript that a new abstract is indispensable. I have therefore had one printed, a copy of which I send you. It is a copy from the plaintiffs with some slight typographical & other errors corrected.

I hope the Court will see fit to grant a re-hearing & that they will be kind enough to examine carefully the written arguments on both sides. Before deciding the cause. Please notify me if a re-hearing is granted. As soon as I get such notice, I will get the consent of the opposite party to bring the case on for decision at the Nov. term.

Your most obt. J. McKenzie,
Counsel for Defs,

(over)

P.S. If a rehearing is granted,
it seems to me that the drafts
ought to be allowed their disburse-
ments for abstracts, inasmuch
as those furnished by plaintiff were
clearly defective. J.H.S.

Shirley
led
Philip et al

Argument Brief

II We must conclude, that in this case if the judgment had been amended by the personal consent of the judge, & no rights of third persons had in the interim intervened the amendment might have been made.

1. But we insist in this case, that the attorney who undertook to execute the power under the letter of attorney acted not as the ^{officer} attorney of the Court, but as the attorney in fact of the principal, & was not therefore an officer of the Court.
2. That up to the time of the amendment there was no judgment against Brigg. Hooper
3. ~~Up to the time of amendment~~ ^{reparata} The judgment was docketed against ^{reparata} Brigg. Hooper. There was nothing on the record by which auditor or any one else could have noticed that any proceedings had been had or were pending against Brigg. Hooper.
4. The powers of an attorney under a power of atty. are special & defined. He can exercise in the name & for his principal no power as a general attorney, but he is limited to the powers given in his letter of atty.

5 Therefore Archbold is atty. of ^{Prison} ~~Prison~~ ^{him} ~~him~~
He. Court do nothing to bind ~~him~~
except what by the list of atty. he
was authorised to do, in the manner
then specified - Of course then the
Court not bind his principals by
entering a judgment against a third
person -

6 The judgment was void - Or could come
into existence of no execution except
upon a judgment against his principals -
and of the execution issued without
authority on a void judgment.

7 Because the Court only had jurisdiction
by consent of parties under the power
of atty. No power having been issued
which brought the party into Court -
and under our Statute no execution
could issue until the end of the term,
except on affr. or by consent of party.

8 We insist then the judgment was void for
want of jurisdiction - was entered without
consent of deft. by name, or in the case
against Philipston - Mary. Hagen

9 If or then all done by the Court & the stuff
was void & remained until the arrest
of Philipston ^{Prison} in prison or by atty. gave
life to that which had no vitality

II

What then were the rights & condition
of plaintiffs & of third persons?

1. ^{1st} ~~Mr.~~ ^{Mr.} Kroger without the knowledge of the
city of Judg. Makes an assignment of his property
for the benefit of his creditors & thereby on the face
of some & obvious facts prior to him
2. Execution was issued on the judg. against
~~Mr. Kroger~~ on the 20th Nov
3. We insist that goods under the assignment
were bona fide in the hands of the assignee as
trust for the creditors - and the rights of creditors thereby
vested in the creditors, and not even by the act
of ~~Mr.~~ ^{Mr.} Kroger by amendment or otherwise,
be divested by relation back of judg. & execution
or in any way impair their rights
4. No such amendments will ever be
allowed as will impair the rights of third
persons

14 Johns. 219

5 Watts a case in point; and when the Court
say the record of such a judg. is no
notice -

See vs Confection, Miller & Co a case in point

5. The creditors under the assignment are as
much entitled to favor & protection as the
creditor judg. creditors, when the assignment is
fair, in this case it is not pretended the assignment is unfair

II V In an estate good sized under an attachment are as effectually lost, as if sized under execution

1 # And it is well established that when property has been levied on by attachment, and an amendment of a declaration is made, adding a new count, the time of the attachment is postponed on subsequent attaching Auditor

2 Pick 607 - 12 Pick 388. 395 - 3 Conn. 137

1 Supp 187 - 14 do 38 - 1 Pick 404

On like principle, if in a race between Auditors, one gets an invalid judgment, before it is corrected the Auditor gets rights in the property by a judgment or otherwise, they should not in preference. Even an incumbrancer was protected in 5 Wall 186 -

Now the Auditor by the assignment of possession under the assignment ⁹⁰⁷ ~~as a~~ Char incumbrance which should be ~~as a~~ protected

9. If the Auditor had mortgaged his property
for to secure any or all his Auditors before
any valid execution had issued, it would
be good as against a valid execution.

2 American Leading Cases 78

How the assignment was made & delivery
completed even before this valid
execution issued, was tried

But if it had been issued ⁱⁿ ~~now~~ could it
cut out the assignment without in-
fringing rights of others -

And it not been ^{from} ~~from~~ the fact of no judg-
es Morgan, they might have sought & obtained
security in some other way -

3 The judg. of Philadelphia in this case
is entitled to no great favor. The note
was given 16th of Nov. payable some
months after, but ^{power of atty.} contained a clause
authorising judg. any time after date -
This clause is seldom known to the
party who gives the power - he does
not suppose he is authorising judg.
until the note is due - but the first
thing he knows a judg. is entitled to exe-
cution ⁱⁿ ~~in~~ on his property - The party
entire judg. under such a power
should be allowed nothing he does
not get by technical legal right

V Mrazan only authorized his atty.
to enter a judgment - but not in his
name to consent to any amendments
of judgment -
a If the first judgment was good he had
it handed to his power - If he had he had
no authority to a part to its alteration
His only authority was to enter or
confess a judgment - to this his power
was confined. He could do nothing
else

Now parties cannot be added as set by content
2 Fairfile 127 - 5 Chanc. 379

VI The judgment could not be amended without
notice to Mrazan & these interested -
Now when in the power of atty -
is there any authority for any let-
ting in his name to receive notice
of amendments & consent to them -
As an ordinary atty. he would have
that power - but here acting under
a special power, he was confined
to the specific powers given, and
by implication could do nothing

It is insisted that the judgment should be reversed
as the proceeds of the property paid over
to the assignee

Wm. Goodrich
for plff. in error.

Whitely

Philips

argument
Brief

Filed July 3, 1888
L. Leland
Clerk

12254