No. 12743

Supreme Court of Illinois

Dodge

vs.

Mack

71641 7

158-41

William M. Dodge
vs
Jacob Mack.

158

12773

859

Be it remembered that heretofore to wit: on the twenty second day of December in the year of our Lord one thousand eight hundred and fifty eight there was filed in the office of the clerk of said court in said cause declaration and Cognovit in the words and figures following, to wit:

Declaration

"State of Illinois } Circuit Court
Peoria County } ss. In Vacation - Dec. 22 - 1858

Jacob Mack complains of William Doherty of a plea of trespass on the case upon promises

For that whereas the defendant on the eleventh day of November A. D. 1858 at Peoria to wit at the County aforesaid made his certain promissory note in writing and then and there delivered the same to the plaintiff and thereby promised to pay the plaintiff or order the sum of one hundred and seventy three dollars and sixty nine cents with interest at the rate of ten per cent per annum and current rate of exchange on New York for value received forty days after the date thereof which period has now elapsed and then and there in consideration of the premises promised to pay the amount of said note to the plaintiff according to the tenor and effect thereof

And whereas afterwards to wit on the eleventh day of November A. D. 1858 at the county aforesaid the defendant was indebted to the plaintiff in the sum of ten dollars for money then and there paid by the

(12743-1)

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plaintiff for the use and the request of the defendant for attorneys fees in this cause. (and the plaintiff avers that the difference of Exchange between said Peoria and said New York is at the rate of one cent per centum on one dollar on the hundred dollars)

And being so indebted the defendant afterwards, to wit on the day and year and at the County last aforesaid promised the plaintiff in Consideration of the premises last mentioned to pay him the said last mentioned sum of Money on request

Yet although requested he has refused and still does refuse to pay any part of either of said monies to the plaintiffs damage of three hundred dollars and thereupon he brings suit &c

Ges H. Stone

Piffs Attys

The Original note and account sued on are herewith filed Marked "A."

Statement of Amt due

Principal of note due Dec 21/58	$173.69
Int for 42 days at 10 per cent	1.31
Attys fees paid for use and at request	10.00
Total Amt due	$185.00
Exchange on $185.00 at one per cent	1.85
	$186.85

Cognovit

And the said William Doherty by William F. Bryan his attorney duly authorised and empowered by virtue of the power of

Attorney filed herewith and attached to said Note marked "A" comes and waiving the service of process confesses the action of the plaintiff and that the plaintiff by reason of the non-performance of his said promise has sustained damage to the amount of one hundred and eighty six dollars and eighty five cents for which sum the defendant confesses judgment in favor of the plaintiff with costs of suit and the defendant further agrees that no writ or errors or appeal shall be prosecuted upon this judgment nor any Bill in Equity filed to interfere in any manner with the operation of the same and releases all errors that may intervene in the entering up of said judgment or issuing execution thereon and also consents that immediate execution may issue on said judgment

William Doherty
By Wm L. Bryan
his atty."

And on the same day to wit; on the twenty second day of December in the year of our Lord one thousand eight hundred and fifty ~~nine~~ eight there was filed in the office of the clerk of said Court in said cause a Note, Power of Attorney and Affidavit in the words and figures following, to wit;

Note

"$173.69 Peoria November 11th 1855

Forty days after date, for value received I promise to pay to Jacob Mack or order the sum of one hundred & seventy three 69/100 dollars with interest at the rate of ten per cent per annum from date with current rate of Exchange on New York.

William Doherty"

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Power of Attorney

"Know all Men by these presents, that whereas, the subscriber William Doherty is justly indebted to Jacob Mack upon a certain promissory note, bearing even date herewith, the sum of one hundred and seventy three dollars and sixty nine cents, made payable to the said Jacob Mack or order, and due forty days after the date thereof

Now, therefore, in consideration of the premises and of the sum of one dollar to me in hand paid by the said Jacob Mack the receipt whereof is hereby acknowledged, I do hereby make, constitute and appoint Wm. F. Bryan or any attorney in any court of record, to be my true and lawful attorney, irrevocably, for me 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 confess a judgment in favor of the said Jacob Mack or his or their assigns 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 ten dollars usual attorneys fees, to be added to the amount due on entering up judgment, 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 prosecuted 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 such judgment, or issuing the execution thereon, and also to consent to immediate execution upon such judgment. ~~Hereby~~ Hereby ratifying and confirming all that my said attorney may do by virtue hereof.

Witness My hand and Seal this eleventh day of November A. D. 1858.

In presence of
William C. James. } " William Doherty (Seal)

"

Affidavit

"State of Illinois
Peoria County } William C. James being first duly sworn says that the within Power of Attorney was signed and sealed by the within named William Doherty in his presence, that he saw said Doherty execute the same and that he is personally acquainted with said Doherty

Subscribed and sworn to } William C. James.
before me this 22nd day }
of December A. D. 1858 }
Henry M. Peck }
Notary Public } "

And afterwards, to wit: on the twenty ninth day of March in the Year of our Lord one thousand eight hundred and fifty nine, there was filed in the office of the clerk of said court in said cause a motion, affidavit & a certified copy of the letters of administration Notice in the words and figures following, to wit:

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Motion

State of Illinois }
County of Peoria } In the Circuit Court
for said County.

Jacob Mack } Judgment for $116.85
Execution issued December 22nd 1858
v
William Doherty } numbered 1773

William M. Dodge Administrator of all and singular the goods, Chattels and property which were of William Doherty late of the County aforesaid, defendant in the above entitled cause by Charles C. Bonney and William H. O'Brien his attorneys comes into court here and moves the court to redocket said cause and supersede in stay all proceedings upon the execution issued therein, or otherwise howsoever, and thereupon to set aside the levy made thereof, upon the goods chattels and property of said William Doherty, for that there is no legal judgment to warrant or uphold said execution and for that the said William Doherty departed this life before the making of said levy, and for that the goods chattels and property were in the actual possession of said administrator peacefully acquired, before and at the time of the making of the levy aforesaid, and for that the pleadings record and proceedings in said cause and the execution and the proceedings had thereon, are otherwise irregular and contrary to the law of the land, as manifestly appear by the affidavit of said administrator herewith filed and by the pleadings, record and

proceedings in the case wherein said execution was issued, and the said William M. Dodge brings into court here the letters of administration issued to him upon the estate of said William Doherty, which show to the court that he is such administrator and ought to be heard upon this motion &c

Downey & O'Brien
Attorneys for said
administrator.

Affidavit. State of Illinois } ss.
County of Peoria } William M. Dodge, administrator of William Doherty late of said county deceased, being first duly sworn says, that the facts touching the levy mentioned in the foregoing motion are substantially as follows, to wit: that the execution was issued on the 22d and delivered to the Sheriff on the 23d day of December A.D. 1858, that no levy was made during the life time of the defendant, that the said William Doherty died on the 10th day of March A.D. 1859 - that on the 14th day of March A.D. 1859 the Sheriff went with said execution to the dry good store occupied by the deceased in his life time and found the same in the possession of the clerks who had charge of the same before the decease of the defendant, and was then and there informed by said clerks that they were taking an account of stock for and on behalf of the representatives of said Doherty as directed by the Counsel of the wife of said deceased, that the Sheriff demanded possession of the goods and

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property therein and also demanded the Key of the store but said Clerks refused said demands and each of them and denied the right of the Sheriff to levy, and told him he should not do so with their consent, and the Sheriff doubting his authority to seize the property by force then and there indorsed a levy upon the unit and without seizing or removing any of the property or assuming any authority over the same, or appointing or attempting to appoint any person to take charge of the same, went away leaving the said Clerks in undisturbed possession as before, that on the 19th day of March A.D. 1859 this affiant was appointed administrator of the estate of said Doherty, and without hindrance or opposition took peaceful and actual possession of said store and goods and commenced making out ~~the~~ an inventory thereof, that on the 21st day of March A.D. 1859, the Sheriff having been indemnified by the plaintiff went again to said store and demanded admittance of said administrator which was refused that the outer doors were locked and thereupon the Sheriff broke the same and entered by force into said store, that this affiant then and there denied the right of said Sheriff to seize the property therein or any part thereof, and claimed the same as such administrator, but the Sheriff seized a portion of the goods and chattels in said store the property of said William Doherty in his life time and removed the same from the store.

Subscribed and sworn to before me this 29th day of March A.D. 1859. E. Pilsbury Clk.

Wm. M. Dodge

Copy of Letters of Administration

"Copy —

Letters of Administration

State of Illinois } ss.
County of Peoria }

The People of the State of Illinois to all to whom these presents shall come, Greeting:

Know Ye that whereas William Doherty late of the County of Peoria and State of Illinois died intestate, as it is said, on or about the 10th day of March A.D. 1859, having at the time of his decease, personal property in this State, which may be lost, destroyed, or diminished in value, if speedy care be not taken of the same.

To the end therefore, that said property may be collected and preserved for those who shall appear to have a legal right or interest therein, we do hereby appoint ~~William~~ William N. Dodge of the County of Peoria and State of Illinois, Administrator of all and singular the goods and chattels, rights and credits, which were of the said William Doherty at the time of his decease, with full power and ~~authority~~ authority to recover and collect said property and debts wheresoever the same may be found in this State, and in general to do and perform all other acts which heretofore, or hereafter may be required of him by law.

Witness Charles Kettle clerk of the County court in and for the said County of Peoria at the office in Peoria this 19 day of March A.D. 1859 and the seal of the said Court hereto affixed.

Seal

Charles Kettle
Clerk of the County Court

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State of Illinois } ss. Clerks Office.
Peoria County }

I, Charles Kettelle, Clerk of the County Court of said County do hereby certify, that the within and foregoing is a true copy of the Letters of Administration issued to Wm M. Dodge on the estate of Wm Doherty, Deceased

Witness my hand and official Seal this 29th March 1859

Charles Kettelle
Clerk,

Notice

State of Illinois } ss.
County of Peoria }

In the Circuit Court for said County

Jacob Mack
v
William Doherty

Judgment for $116.85
Execution issued December 22d 1858
Numbered 1773

To William O. Bryan Esq Attorney for the above named plaintiff - you are hereby notified that I have this day filed in the office of the clerk of said Court, a Motion and affidavit - copies of which are hereto attached, and that at the opening of Court to-morrow morning the 30th instant, I shall ask said Court to allow said Motion

Peoria March 29th 1859

Wm M. Dodge Admr
of Wm Doherty, dec'd

Affidavit "State of Illinois } ss.
County of Peoria } William M. Dodge being first duly sworn says, that he has this day served on William F. Bryan, Attorney for Jacob Mack a copy of the foregoing mototion, affidavit and notice herewith filed &c; Affiant further says that said William F. Bryan as attorney for said Mack, personally directed the levy mentioned in said affidavit and that said Bryan has information and notice of all the proceedings mentioned herein

Subscribed and sworn to before me this 29th day of March A.D. 1859
E. P. Hoan, Clk

Wm M. Dodge

And afterwards, to wit; on the thirtieth day of March A.D. 1859 there was filed in the office of the clerk of said court in said cause an affidavit in the words and figures following, to wit;

"Jacob Mack } Circuit Court
vs } March Term A.D. 1859
William Doherty }

In a motion to set aside levy &c.

State of Illinois }
Peoria County } ss.

John Rymer, Sheriff of said county having been duly sworn says, that he is the Sheriff mentioned in the petition and affidavit of William M.

11 (over)

Dodge, Administrator of Dais Doherty, filed in said Court upon this motion. That the facts therein stated are substantially true so far as they relate to the action of this affiant with the exception that on the 14th day of March instant, affiant as such Sheriff and having said execution and others of same date in favor of same plaintiffs and against said Doherty, went into said store and demanded possession of said goods by virtue of said executions — that the said Clerks who were then in possession of said store professing to act under advice and claiming no personal interest in said store, informed affiant that if he levied on said goods he must do so on his own responsibility, to which affiant replied that he would levy on his own responsibility — that affiant then demanded the key, which they refused to give — that affiant then offered to appoint one of said Clerks as Custodian of said goods, but they refused to act — that affiant then ordered said Clerks out of said store, that they refused to go, unless forced out — that said Clerks then told affiant that said store would be open every day during business hours and that affiant could then have ingress and regress to and from said store at his pleasure — that said store was always after that day closed and locked so that affiant could not gain admittance, except by forcing the door — That while in said

Store on the 14th instant, he made and indorsed the levy of that date, which is now on the back of said executions — That said executions were all delivered to him on the same date to wit: December 23, 1858 — That affiant considered himself as having a right to enter said Store at any time after said 14th to take away said goods by virtue of said arrangement with said Clerks.

Subscribed and sworn to before me this 30th day of March 1859
C. P. Sloan, Clk.

John Bryner
Sheriff

Proceedings in the Circuit Court in and for the County of Peoria in the State of Illinois in Vacation after the November Term ~~A. D. 1858~~ of said Court in the Year of our Lord one thousand eight hundred and fifty eight

Wednesday December 22nd A. D. 1858

Jacob Mack
vs
William Doherty

Assumpsit

On this twenty second day of December in the Year of our Lord one thousand eight hundred and fifty eight there was filed in the office of the Clerk of this Court the declaration of the said Jacob Mack

in this action by George H. Stone attorney and thereupon Wm. F. Bryan one of the attorneys of this Court on behalf of the said William Doherty and by virtue of a power of attorney for that purpose executed by the said William Doherty and now produced and filed in the said Clerks office together with the affidavit of William C. James proving the due execution of said power of attorney by the said William Doherty, filed a plea to said declaration, and therein as to the matters and things in the plaintiffs declaration herein contained say it is true, that he did assume and promise in manner and form as the plaintiff has declared against him and that by reason of the non performance of said promises and undertakings the plaintiff has sustained damage to the amount of one hundred and eighty six dollars and eighty five cents Therefore it is considered by the Court that the said Jacob Mack have and recover of the said William Doherty the said sum of one hundred and eighty six dollars and eighty five cents ~~their~~ his damages aforesaid, in form aforesaid confessed, and also his costs and charges by him about his suit in this behalf expended and that he have execution therefor.

Proceedings at a term of the circuit court began and held at the Court house in the City of Peoria, in and for the County of Peoria in the State of Illinois on the first Monday of March in the Year of our Lord one thousand eight hundred and fifty nine, it being the Seventh day of said Month. Present the Honorable Elihu N. Powell judge of the 16th Judicial Circuit in the State of Illinois, John Bryner, Sheriff and Enoch P. Sloan, clerk, to wit:

Wednesday March 30th A.D. 1859

Jacob Mack

vs

William Doherty

This day came the plaintiff by William J. Bryan his attorney and also came Wm. U. Dodge Administrator of the estate of the said William Doherty deceased by Barney O'Brien his attorney and this cause came on to be heard on the Motion of said Administrator to stay proceedings in this cause and to set aside the levy, for reasons stated in Motion on file — and the Court having heard the argument of counsel and being fully advised in the premises overruled said Motion.

And afterwards to wit: on the first day of April in the Year of our Lord one thousand eight hundred and fifty nine there was filed in the Office of the Clerk of said Court in said cause a Bill of Exceptions in the words and figures following, to wit:

15

16 "

In the Circuit Court of
Peoria County.

Jacob Mack
v
William Doherty

Motion to stay proceedings & set aside levy &c.

Wednesday March 30th 1859

Be it remembered that on this day before the Court — came William M. Dodge, administrator of said William Doherty by Charles E. Bonney his attorney, and said Jacob Mack by William H. Bryan his attorney and thereupon this case comes on to be heard upon the Motion of said William M. Dodge Administrator of said William Doherty which motion is in the words and figures following, to wit:

[See page 6 & 7 of this transcript]

And thereupon said William M. Dodge administrator of said Doherty on leave in evidence in support of said motion an affidavit in the words and figures following to wit:

[See page 7 & 8 of this transcript]

And said Jacob Mack read in evidence against said motion an affidavit of ~~said~~ John Bryner in the words and figures following, to wit:

[See page 11 & 12 of this transcript

This was all the evidence beside the pleadings &c in the case - and upon the arguments of Counsel the Court overruled said motion - to which ruling and judgment the said William M. Dodge then and there excepted and thereupon prayed the Court to sign and seal a bill of exceptions - which is accordingly done.

E. N. Powell (Seal)

State of Illinois }
County of Peoria } I, Enoch P. Sloan, clerk of the Circuit Court in and for the County of Peoria in the State of Illinois, do hereby Certify that the foregoing is a true and Correct Copy from the records and the files in My Office.

In witness whereof, I hereto set my hand and affix the Seal of said Court at office this Sixth day of April in the Year of our Lord one thousand eight hundred and fifty nine. Enoch P. Sloan, clk

State of Illinois }
In the Supreme Court at Ottawa -
Of the April Term A.D. 1859 -

And hereupon comes the said William M. Dodge, administrator of the

17

said William Doherty by Charles C. Bonney his attorney, and says that, in the record and proceedings aforesaid, and also in the rendition of the judgment aforesaid, there is manifest error in this, to wit:

1. There is no legal judgment to warrant the issuing of the writ of execution.
2. The levy mentioned in said proceedings is illegal and void.
3. The property seized by the Sheriff was the property of the administrator at the time it was taken, and so not subject to any execution against said William Doherty.
4. The Court below erred in overruling the motion to stay proceedings, and set aside the levy—
5. The record and proceedings aforesaid are otherwise irregular and contrary to the law of the land.

Wherefore the said William M. Dodge prays that the judgment aforesaid for the errors aforesaid and for other errors apparent in the record and proceedings aforesaid may be reversed, annulled and altogether held for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment &c—

Charles C. Bonney,
attorney for plaintiff in error.

Whereupon comes the said Jacob Mack by Bryan & Stone his attorneys and says that there is no error, either in the record and proceedings aforesaid, or in the rendition of the judgment aforesaid - and prays that the said Supreme Court now here, may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid above assigned for error, and that the judgment aforesaid in form aforesaid given, may be in all things affirmed &c -

Bryan & Stone
Pltffs Atty

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In the Supreme Court

1858

William M. Dodge Admr. &c.

vs

Jacob Mack

Error to Peoria Circuit Court

Record
Errors
Joinder

Romney for Plff.

Bryan for Dft

Filed April 7. 1858

S. Lillard
Clerk

3.80

Rec. 3.80 Abs. 3. paid by Romney

Dodge
vs
Frack

Supreme Court
April Term 1859

Argument of Defendant in Error

1. The provisions for payment of debts in Stat. of Wills, have reference

1. To "demands" or "claims" against Estates

2. To the assets in hands of Administrator or belonging to the Estate.

But a creditor who has an absolute lien by mortgage or otherwise does not make a demand or claim agt the Estate He relies upon his lien – and claims only the deficiency, if any from the Estate.

Nor does the property which the debtor has incumbered or pledged in his lifetime, become

asset in the hands of the Administrator, Except for the Excess over the amount of the incumbrance.
Such Excess only is the property of the Estate, and as such comes into the hands of the Administrator for distribution under Stat. of Wills.
The lien of the Execution "binds" the goods as effectually as a mortgage.

2 The Statutory provisions cited by Plff in Error in relation to Executions against Real Estate, only shew that the prior law quoad hoc, was thereby modified. The suspension of the remedy, naturally suggested the saving of the lien — although wholly unnecessary, if Execution had issued during life of the debtor and within the year —

3 There is no disagreement among the authorities as to the right to levy ~~upon~~ in after death upon Execution issued & delivered to Sheriff during life of debtor — The cases cited by

[1874 21]

Plff in Error from Ohio Reports are based upon an express Statutory provision that Executions shall not be a lien upon personal property until after levy #

4 The cases cited in defts Brief are referred to as conclusive as to the validity of the Judgment. — Those in 2 English and 1 and 4 Missouri are especially in point. The New York & Pennsylvania authorities are cited merely to show that the practice which I am sanctioned in those States

The mode of entering up these judgments is regulated by rule of the Circuit Court. They are under the direct supervision of the Judge, and are as much the "conclusions of law" and judgment of the Court upon the matters agreed, as if entered in Term

W. G. Ryan
for Defts in Error

I have not been able to find the Ohio Statutes in this Library. — They are at Peoria.

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Dodge

vs

Meek

Argument of
Dft in Error

No 158

Filed April 23. 1869
L. Leland
Clerk

William M. Dodge
Administrator of
William Doherty
vs
Jacob Mack

Supreme Court
April Term
A.D. 1839

Since the filing of Defendant's Brief and argument it has been discovered that the execution and levy are wholly omitted from the record. As the want of power in the Sheriff to make the levy after death of defendant in Execution was the only point made in the Circuit Court, it was taken for granted that the Sheriff's proceedings would appear in the record. Defendant's misapprehension therefor of the facts in the case ~~case~~ one to show that there is no question in regard to the fact of an actual levy having been made, the Counsel for Appellee asks leave of the Court to make and file ~~his statement~~ as an addition to his "Argument" heretofore filed, this Statement accompanied by a copy of the execution and levy of the Sheriff, on file to, that office, the same being yet in his hands.

The only object of introducing the Affidavit of the Sheriff in regard to the levy of the 21st March not give that office the benefit, if any, of such levy, prior to the appointment of an Administrator. But as an administrator can have no higher, a stronger claim to the goods, than a voluntary grantee, a purchaser with notice, ~~or~~ in fact the defendant himself, it is not perceived that there can be any necessity for calling in the aid of a prior levy to give strength to the actual taking and removing of the Goods by the Sheriff on the 21st March.

Should this Court however think otherwise, the Appellee claims the benefit of such prior levy. In other words he claims the benefit

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of the entire proceedings of the Sheriff as indorsed by him on said execution.

J. T. C. Pryor
Atty for Appellee

Peoria April 25. 1859

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Dodge vs
March

appellee's argt.

Filed April 26. 1839
L. Leland
Clerk

Preferred

STATE OF ILLINOIS, SS.

IN THE SUPREME COURT AT OTTAWA.

OF THE APRIL TERM, A. D. 1859.

	WILLIAM M. DODGE, ADMINISTRATOR OF WILLIAM DOHERTY, Plaintiff in Error, *versus* JACOB MACK, Defendant in Error.	ERROR TO PEORIA CIRCUIT COURT.

PAGE OF THE RECORD.

ABSTRACT OF THE RECORD.

1 Declaration in assumpsit, filed in vacation, December 22d, 1858, on note for $173 69, dated November 11, 1858, due at forty days, with exchange on New York, and ten per cent. interest. Declaration also contains common counts.

Cognovit by Wm. F. Bryan, attorney, for $186 85, waiving error, appeal, &c.

3 Copy of note sued on.

4 Power of attorney to confess judgment.

5 Affidavit of execution of power of attorney.

6 Motion, filed March 29, 1859, to stay proceedings, set aside levy, &c., for following reasons, to wit:

1. There is no legal judgment to warrant the execution.
2. William Doherty departed this life before any levy had been made.
3. The goods, chattels and property levied, were in the actual possession of the administrator, peacefully acquired before and at the time of the making of the levy.
4. The pleadings, record and proceedings are otherwise irregular and contrary to law, as appears by the same, and the affidavit filed, &c.

Profert made of the Letters of Administration.

7 Affidavit of Wm. M. Dodge, showing

1. Execution issued December 22d, 1858.
2. Delivered to the sheriff on the next day, the 23rd.
3. No levy made during the life of the defendant.
4. Defendant died March 10th, 1859.
5. Sheriff went to defendant's store on 14th March, 1859, and demanded possession of the clerks, which was refused and no levy made.
6. Affiant appointed administrator March 19, 1859, and took actual and peaceful possession of the property in question.
7. March 21, 1859, the sheriff, having been indemnified, broke the outer door of the store, and seized and removed a portion of the goods.

9 Certified copy of Letters of Administration.

10 Notice of motion to set aside levy, &c., and affidavit of service of copy of motion, affidavit and notice.

11 Affidavit of John Bryner, sheriff, mentioned in affidavit of Dodge, stating

1. *That that the facts stated in Dodge's affidavit are substantially true.*

2. That the clerks claimed no personal interest in the goods.

3. That affiant offered to appoint one of the clerks custodian, but they refused to act.

4. That he ordered said clerks out of the store, but they refused to go.

5. That said clerks said that he, the sheriff, could have ingress and egress at his pleasure.

6. That after that day the store was kept closed and locked.

6. That he indorsed a levy on the 14th March, and "*considered himself* as having a right to enter and take away the goods at any time thereafter."

Proceedings of circuit court, to wit: December 22, 1858, on filing declaration, power of attorney, proof of execution thereof, and cognovit, judgment for Jacob Mack against William Doherty for $186 85 and costs.

March 30, 1859, hearing on motion to stay proceedings, set aside levy, &c., and motion overruled.

16 Bill of exceptions, setting out—1, motion to set aside levy, &c.; 2, affidavit of Wm. M. Dodge; 3, affidavit of John Bryner; 4, that this was all the evidence beside the pleadings.

Clerk's certificate.

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ERRORS, TO WIT:

1. There is no legal judgment to warrant the issuing of the writ of execution.

18 2. The levy mentioned in said proceedings is illegal and void.

3. The property seized by the sheriff was the property of the administrator at the time it was taken, and so not subject to any execution against said William Doherty.

4. The court below erred in overruling the motion to stay proceedings and set aside the levy.

5. The record and proceedings aforesaid are otherwise irregular and contrary to the law of the land.

CHARLES C. BONNEY,
Attorney for Plaintiff in Error.

15-8.

In the Supreme Court

William M. Dodge Admr. &c

vs

Jacob Mack

Error to Peoria Circuit Court

Abstract

Filed April 9. 1859

L. Leland
Clerk

(18)

State of Illinois }
}
In the Supreme Court at Ottawa

William M. Dodge
administrator of
William Doherty
plaintiff in error
versus
Jacob Mack
defendant in error

Error to Peoria
Circuit Court -

I do hereby enter myself secu=
=rity for the costs of the plaintiff
in this case, and acknowledge
myself bound to pay the same,
according to the Twenty Ninth
Rule of said Supreme Court -

Charles C. Bonney

"

(2442-17)

In the Supreme Court

Wm. M. Dodge admr. &c

v

Jacob Mack

Security for costs.