

No. 12849

Supreme Court of Illinois

McNa^Lal.

vs.

Vehon.

221-99

John B. McNeill

vs

Abraham. Richman

221

12849

1859

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United States of America }

STATE OF ILLINOIS, COUNTY OF COOK, S. S. }

Pleas, before the Honorable George Manure

Judge of the Seventh Judicial Circuit of the State of Illinois, and Solo Presiding
Judge of the Circuit Court of Cook County, in the State aforesaid, and at a term thereof
begun and held at the Court House in the City of Chicago, in said County, on the

Fourth Monday, (being the fourth day) of

November in the year of our Lord one thousand eight hundred and

Eighty Seven and of the Independence of the said United States the

Eighth

Present, Honorable George Manure Judge of the 7th Judicial }
Circuit of the State of Illinois. }

Charles H. Carr States Attorney.

John L. Wilson Sheriff of Cook County.

Attest: Wm. C. Church Clerk.

Be it Remembered that herebefore
to wit on the 14th day of October
A.D. 1857. there was filed in the
Office of the Clerk of the Circuit
Court aforesaid a certain Declaration
which is in the words and figures
following to wit:—

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Sale of Menzies
Cook County

Cook County Circuit Court
November Term A D 1858

1st Court

Abraham Olsen Plaintiff
Complain of John A. McHale
Defendant of a plea of Trespass
For that the said
Defendant on the tenth day of
September A D 1857, Entered a
Certain message or house of the
said Plaintiff, State and being
in Violation of the laws of Cook County
and State of Illinois and with force
and arms seized and carried away
the furniture goods and chattels
property of the said Plaintiff
to wit 2 Cherry Case Rocking
Chairs - 1 Common Case Rocking
Chair 1 Armed do - 6 Common
Case Chairs - 5 Armed Chairs
22 Common Case Chairs 11
Medium Case Chairs 1 Cherry
Table with leaves 30 Stool
Chairs 1 Bundle Bedstead
1 doz Brooms 16 Axes
1 Day in Black Walnut 2

Wash Stand 1 Mahogany
 Center Table 1 Cherry Wash Stand
 1 renewed 3 mahogany wash stand
 1 mahogany Center Stand 1 Office
 Desk 1 Office desk Black walnut
 2 Lounges 3 mahogany Sofas 4
 mahogany Rocking Chairs 4 Cane
 Bottom do 4 Mahogany Chairs
 1 mahogany Easy Chair 1 Center
 Table 2 Marble Topped Center Tables
 1 marble topped wash stand 1
 marble topped Bureau 1 Cherry
 Bureau 1 Table with leaves
 1 Blk Walnut Table with leaves
 3 Mahogany Mirror Cases 1
 Mahogany mirror medium 4. Dist.
 Small 2 do Octagon Small 1 Settee
 3 mahogany Chairs 2 medium
 looking Glasses Square 1 Small
 do 1 Infant's Chair 10 Chair
 uphol 1 armed Chair 1 Cane Chair
 8 mahogany Chairs 3 cane
 Rocking Chairs 1 Cherry Cottage
 Single Bed Stand 1 Black Walnut
 do 2 Oak do 2 Bed Stands
 double Cherry 2 do Black Walnut
 2 Cherry Bed Stands double Cherry
 2 do Blk Walnut do 1 Pine do

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6 White and Do. 5 Black Walnut Do
 1 Blk Walnut Table with leaves 1
 Cherry do 1 Pine do 6 Can Cherry
 Chairs 1 Pine Can Chair 5
 Common Chairs 5 Cherry do 2
 Blk Walnut Tables with leaves
 6 Infants Chairs 1 Can Rocking
 Chair 1 Small do 1 Large do
 1 White Cornered Chairs 8 2 Common
 Chairs 6 infants Chairs 4 medium
 Can Rocking Chairs 4 large cornered
 Rocking Chairs 10 Can cornered
 Salon Chairs 9 cornered Rocking
 Chairs 11 Common do 5 Common
 Small do 4 Small Rocking Chairs
 with arms 1 one. 11 paper of large
 value to wit of the value of Three
 Thousand Dollars then there found
 and being and converted and
 disposed of the same to his own
 use to wit at the County
 aforesaid at the time aforesaid

2 Count

And also for that the
 said Defendant on the day
 and year aforesaid with force
 and arms to wit at the County
 aforesaid seized took and carried
 away certain goods and chattels

to wit one wagon the property
 of the said Plaintiff of great
 value to wit of the value of five
 hundred dollars then found and being
 in the possession of the Plaintiff
 and converted and disposed of
 the same to his own use to wit
 at the County aforesaid at the
^{time aforesaid} ~~County~~ aforesaid, Shiggs took and
 carried away certain goods and
 Chattle to wit one wagon the
 property of the said Plaintiff of
 great value to wit of the value
 of five hundred dollars then
 found and being in the possession
 of the Plaintiff and converted
 and disposed of the same to his
 own use and benefit to wit
 at the County aforesaid at the
 time aforesaid

3 Count

And also for that the
 said Defendant on the day and
 year aforesaid with force and arms
 &c to wit at the County aforesaid
 seized took and carried away divers
 goods and Chattle of the said
 Plaintiff of the like number
 quantity quality description and value

6 as the said goods and chattels
in the final Count of the said
Declaration mentioned then there
found and being and converted
and disposed of the same to his
own use and other wrongs to
the said Plaintiff then and
there did against the peace
and to the damage of the said
Plaintiff of Three Thousand
Dollars and therefore in and
Blackwell Thomas Robert

Jeff City
And afterwards to wit on the
11th day of November AD 1857 it
being one of the days of the
Remder Term of said Court for said
year the following among other
proceedings was read and entered
of Record in said Court to wit:

Shraham Vinton }
vs }
James McHale } Sheriff

Ordered that the General Rule to
plead in the above case be extended
one week

7. And afterwards to wit on the 24th
Day of November A.D. 1857. there
was filed in the Office of the
Clerk of the Circuit Court
aforesaid a certain "Plea" which
is in the words and figures
following to wit &

Cook County Circuit Court
John A. McCall
vs
Abraham Schenck

And the said Defendant by
Scates C. C. ~~Wicks~~ ^{and} Smith
and ~~Scates~~ his Attorney Comes and
Defends the force and injury then &c
and says that he is not guilty
of the said ~~Unlawful~~ Trespases above
said to his Charge or any or either or
any part thereof in manner and
form as the said Plaintiff hath
above thereof Complaind against
him and of this he puts himself
upon the Country &c

And for a further plea in
this ^{case to the second} ~~second~~ ^{and} Third Count in said
declaration the said Defendant says

acts now because he says that
 before the time of the committing of
 the supposed trespass in the said
 declaration mentioned to aid in the
 said Term in the year of our
 Lord one thousand eight hundred
 and fifty seven in the Circuit
 Court of the United States of
 America in and for the Southern
 District of Illinois before the
 Judges thereof at the City of Chicago
 in said District one Michael
 Gaffney and Patrick Gaffney by
 the consideration and judgment
 of the said Court recovered against
 one Wolf Vidum the sum of thirteen
 hundred and forty two dollars and
 fifty five cents which in and by
 the said Court were then and there
 adjudged to the said Michael
 and Patrick Gaffney for their
 damages which they had sustained
 by reason of the non performance
 by the said Wolf Vidum of certain
 promises and undertakings then
 made by the said Wolf
 Vidum to the said Michael and
 Patrick Gaffney besides the sum

of thirty two dollars and fifty five
 cents for their costs and charges
 in the said suit whereof the
 said defendant in the said
 suit was convicted as by the
 record and proceedings thereof
 remaining in the said Court before
 the Judge thereof at Chicago
 aforesaid more fully appears
 and the said defendant
 further says that the said
 judgement being in full force
 and the said damages remaining
 unpaid and unsatisfied the said
 Michael and Patrick Gaffney
 on the 9th day of September
 1834 at Chicago filed and
 prosecuted out of said ^{Circuit} Court
 of the United States of America
 a certain writ called a fieri
 facias directed to the Marshal
 of the said Northern District
 of Illinois by which said writ
 the said Marshal was
 commanded that if the goods
 and chattels lands and tenements
 of the said Wolf when he
 should cause to be levied the

damages and costs aforesaid
 and that he should have that
 money before the said judges at
 Chicago aforesaid in twenty days
 after the date thereof to render
 to the said plaintiffs for their
 damages and costs aforesaid
 and that the said Marshall
 should leave them there the said
 writ which said writ afterwards
 and before the return day thereof
 and before the said term where
 it was on the same day and year
 aforesaid at the City of Chicago
 aforesaid was delivered to the
 said Marshall to be executed
 in due form of law and the
 said defendant further avers
 that at the time of the issuing
 of the aforesaid writ of fieri
 facias as aforesaid and the
 issuing of the same as hereinafter
 mentioned he was the agent of
 the said Michael and Patrick
 Saffrey in respect to the enforcing
 & collection of the said judgment
 so recovered as aforesaid by them
 against the said Wolf & Son

and as such was authorized
and Commanded to Direct
the levy of the said Prior's facias
upon the property of him the
said Wolf Schen
And the said defendant further
avows that afterwards and
before the return day of the
said writ of Prior's facias
to wit on the Ninth day of
September A D 1854 the said
Goods and Chattels in the said
Complaint in the said declaration
mentioned being the property of
the said Wolf Schen and
in the possession of the said
plaintiff to wit at the City
of Joliet in the County of Will
in the said District and as the
property of the said Wolf
Schen being then and there liable
to be seized and taken in virtue
of said writ of Prior's facias the
said defendant as such
agent of the said Michael
And Patrick Gaffney as aforesaid
then and there directed the said
Marshall to levy upon the

said Goods and Chattels in
 the said Courts mentioned
 so as aforesaid in the
 Possession of said Plaintiff and
 which had before then been
 fraudulently sold to him by
 said Defendant to keep the same
 from said Captains Seizement
 and Execution aforesaid and
 being so kept & possessed
 and the said Marshalls then
 and there having the said
 writ of fieri facias so issued
 and delivered to him as
 aforesaid and before the return
 day thereof did on to wit the
 day and year in the said
 Declaration mentioned by virtue
 of the said writ and the
 directions of this defendant as
 such agent as aforesaid
 Seize and take the said goods
 and Chattels in the said
 Courts mentioned as he lawfully
 might which are the said several
 supposed trespasses whereof the
 said Plaintiff hath afore
 thereof complained against the

said defendant and this he is
 ready to verify, wherefore he prays
 Judgment ^{as to said counts} of the said plaintiff
 ought to have or maintain
 his said action thereof against
 him &c

And for a further plea
 in this behalf as to the first
 Count in said declaration and
 as to the breaking and entering
 the said. messuage and
 house of the said plaintiff
 taking and carrying away the
 said goods and chattels the
 said defendant says acti-
 on because he says that
 before the time of the said
 supposed trespasses at the
 July Term of the Circuit
 Court of the United States
 of America in and for the
 Northern District of Illinois
 to wit on the 3 day of August
 A.D. 1854 before the Judge thereof
 at the City of Chicago in said
 District One Michael
 Gaffney and Patrick Gaffney
 by the consideration and judgment of the

14. Said Court assessed against one
Wolf when the sum of thirteen
hundred and forty two dollars and
fifty five cents which in and by
the said Court were then and
there adjudged to the said
Michael and Patrick Gaffney
for their damages which they
had sustained by reason of the
non performance by the said
Wolf when of certain promises
and undertakings then lately made
by the said Wolf to the said
Michael and Patrick Gaffney
and also the sum of thirty two
dollars and forty five cents for
their costs and charges in
their suit in that behalf
expended whereof the said
Wolf when was committed as
by the records and proceedings
thereof remaining in the said
Court before the said judge
thereof at Chicago appears
more fully appears and the
said judgment being in full
force and the said damages
and costs remaining unpaid

and undersigned The said
 Michael & Patrick Gaffney
 on to wit the 9th day of September
 A.D. 1857 to wit at Chicago
 Aforesaid sued out and
 procured out of said Court
 a certain writ commonly called a
 fieri facias directed to the
 Marshall of the said District
 by which said writ the said
 Marshall was commanded that
 of the goods and chattels lands
 and tenements of the said
 Wolf when he should cause to be
 levied the sum of thirteen hundred
 and twenty dollars the said
 damages and costs aforesaid
 and that he should have the
 money before the said Judges
 at Chicago aforesaid in sixty
 days after the date thereof to
 render to the said Plaintiff
 for their damages & costs
 aforesaid and that the said
 Marshall should have then
 there the said writ ~~with~~
 which said writ afterwards
 and before the return day thereof

and before the said Person when
 to wit on the same day and year
 aforesaid at the City of Chicago
 aforesaid was delivered to the said
 Marshall to be executed in
 due form of law and the
 Defendant avers that at the
 time of the issuing of the
 said writ as aforesaid
 & the levy thereof as
 herein after mentioned he was
 the Agent of the said
 Michael and Patrick Gaffney
 as respects the Enforcement
 of the said Judgement —
 And he further says that the
 said goods and Chattels in the said
 first Count mentioned then and there
 to wit at the City of Joliet in
 the County of Will in said Northern
 District of Illinois being in the said
 Warehouse and House and being
 then and there the property of the
 said Wolf & Son but having been
 fraudulently transferred to said
 Plaintiff to defraud said Gaffneys and
 liable to be taken upon and by virtue
 of the said Writ of Fieri Facias

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The said Defendant as such
 Agent as aforesaid for the
 purpose of directing the Marshall
 aforesaid as to the laying of
 said writ so directed to him
 as aforesaid before the return
 day thereof to wit at the time
 when &c at Joliet in said
 District peacefully and with the
 said Marshall for the purpose
 of executing the said writ entered
 into the said messuage & house
 so situated at the City of Joliet
 in said County of St. Clair
 aforesaid in order to seize
 and take and the said
 Marshall did then & there
 seize and take in execution
 the said goods and chattels
 of the said Half Schem in the
 said Court and the introduction
 part of this plea mentioned the
 same being then and there in the
 said messuage & house for the
 purpose of laying the monies
 so directed to be levied by the
 said writ as he lawfully
 might for the cause aforesaid.

doing us unnecessary
 damage to the Plaintiff
 on that occasion which are
 the several supposed trespasses
 in the introductory part of this
 plea mentioned whereof the
 said Plaintiff hath above
 thereof complained against him
 and this he is ready to verify
 wherefore he prays judgement
 if the said Plaintiff shall so
 move or maintain his
 aforesaid action thereof
 against him &c
 Test m^o a^o J^o Smith ^{and} Sealby
 Deft Attys

And afterwards to wit on the
 24th day of November A.D. 1857
 there was filed in the Office
 of the Clerk of the Court
 aforesaid a certain Deed or conveyance
 which is in the words and
 figures following to wit:—

State of Illinois }
 Cook County }
 Cook County Circuit Court
 Nov Term 1857

Abraham Vinton }
 John. A. McCall } Trust of

And now comes the said
 Plaintiff by Blackwell. Thomas
 Roberts his attys & says that
 by any thing sustained in the
 said Defendants first Special
 plea herein contained he ought
 not to be barred &c because he
 says that said plea & the
 matters & things therein
 contained are insufficient
 in law & off for any Judgment

And the P^r Plaintiff
 shews to the Court the following
 Causes of Demurrer. To wit

1st Said plea amounts to
 the general issue —

And said plea is argumentative
 in this that it avers that the
 said property & Chattle in the
 distribution mentioned were the
 property of one Wm. Vinton
 not of the Plaintiff

Blackwell Thomas Roberts
 Attys

And Afterwards to wit on
the 3^d day of December
A.D. 1857 it being one of the
days of the November Term
of said Court for said
year the following Among
other proceedings were read
and Entered of Record in
said Court to wit:

1163 Abraham Wilson }
vs } Sheriff
John A. McHale }

This day came the said
parties and by their
agreement made here in
Open Court the demand of the
said Plaintiff to the said
Defendants plus Merces
pleaded were duly submitted
to Court

And Afterwards to wit
on the 11th day of January
A.D. 1858. it being ^{one of} one of the
days of the ~~November~~ Term
January Special Term of said
Court for said year the

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following among other
proceedings was read and
Entered of Record in said Court
to wit

11.63

Shaham Behn }
John M. McHale } Sheriff

This day comes again
the said parties by their
Attorneys and the Court having
heard Counsel in the said
plaintiffs demurrer to the said
defendants plea herein pleaded
and being duly considered in
the premises sustains said
demurrer to the first Special
plea of said defendants and
overrules said demurrer as to
the second Special plea
Whereupon the said defendant
elects to stand by his said
pleas

And as to I rec'd Special Plea
 Plffs says proclude men. because
 he says that the same is insufficient
 in law & Plffs demands thereof &
 signs for causes of demurrer
 & that said plea amounts to
 the General issue -

& said plea is argumentative
 in this that it avers that I
 Chatter were the property of
 one Holy Usher & therefore
 Plff says Just

Blanchard Thomas Roberts

doing me unnecessary damage
to the Plaintiff on that
Occasion which are the
Several supposed Grievances
in the introductory part of this
Plea mentioned wherein the
said Plaintiff stated above
thereof complained against him
and this he is ready to verify
Wherefore he prays Judgment
if the said Plaintiff ought to
have or maintain his
assault action thereof
Against him &c.

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Scats McCallen & Seaborn

Deft Atty's

And afterwards to wit on the 28th Day
of November 1857. There was
filed in The Office of The Clerk
of the Circuit Court aforesaid a
Certain Pleadings and Demands
which is in the words and
figures following to wit:

Carl County Cir Court

John A. McCallen

vs

Abraham Seaborn

And the said Defendant says

22 That the said Special Pleas by
him jointly and severally were
pleaded in ~~an~~ manner & form
so as sufficient in law to bear
the said plaintiffs action and to be
answered unto &c

And prays judgment &c
Seals Hallister Sorrell and
Rabdy

Deft Atty
And afterwards to wit on the
11 Day of January AD 1858
there was filed in the office of
the Clerk of the Circuit Court
aforesaid a certain Replication
which is in the words and
figures following to wit:—

State of Illinois }
Cook County }
Circuit Court
January Term 1858
Shubert John }
vs } Trustee
John A. Hall }
Plaintiff }
Defendant }

And now comes the
said Plaintiff by George Thomas
& Robert his atty and says as to

the Special plea of the said
 Defendant to the first Count
 of Plaintiff's declaration
 precluding him because he says
 that the said goods and
 chattels where where were not
 the property of the said
 Defendant but that the property of
 the Plaintiff and of this the said
 Plaintiff puts himself upon the
 Country &c

Gertkins Thomas and Roberts
 Atty for Plff

And afterwards to wit on the 15
 day of April A.D. 1858. it being
 one of the days of the April Term
 of said Court for said year &
 this Cause having been regularly
 continued thereto the following
 among other proceedings were
 had and entered of Record in
 said Court. To wit:-

Abraham Vernon

John A. McCall

For Def

This day came the said parties

by their attorneys, and ifue being joined herein it is ordered that a Jury come thereupon come the persons of a Jury of good and lawful men to aid!

Daniel Suttill E. B. Wheeler

David Mickle M. D. Davis

Gene Mckat J. M. Baker

John H. Kelly G. C. Runkle

James Pace W. H. Bough

Wm. Minchell Patrick Kelly

The Jury duly elected tried and

sworn well and truly to try the ifue joined aforesaid after hearing the evidence adduced arguments of

Counsel and instructions of the

Court where to consider of their

verdict and afterwards come

into Court and say "We the Jury

find the said Defendant guilty

and assess the said plaintiffs

damages herein to the sum of

Three hundred and Eighteen Dollars

and thirty five Cents" Whereupon

the said Defendant moves the

Court for a new trial of this

cause and in arrest of

Judgement

25- And on the same day to wit the
15th day of April A.D. 1858. There
was filed in the above Cause
Certain "Instructions to the Jury"
which are in the words and
figures following to wit:-

Plaintiffs Instructions
1. If the Jury find from the
evidence that the Defendant
directed the Marshall to buy
the Education in question upon
the property in question and sell
the same thereon & that the
property was the property of
the Plaintiff then the Jury will
find for the Plaintiff the value
of the property at the time the
same was taken by the Marshall
and they may also assess
interest thereon from that date
in the nature of damages.

And If the Jury find that
the Defendant was guilty
of the Trespass as alleged
in the Declaration and that
the Trespass was wrongful.

26 *Given* *appropriately and unlawfully committed*
Then the Jury may give
Exemplary Damages in addition
to the value of the property
suffered in the nature of damages
from the time at which it was
taken —

Given Defendant Instructions
The plaintiff is not entitled to
recover any damages in this
Case for the entering into the
Store in question or for
shutting up the same

And after a word to wit on the
1st day of June 1858. It
being as yet one of the days of
the said April Term of said
Court for said year the
following among other
proceedings was had and
Entered of Record in said
Court to wit:

Abraham Schenck }
vs }
John C. McFall } *Verdict*

27

This day comes the said
 Defendant by his attorney and
 withdraws his motion for a
 new trial of this cause and in
 acquiescence of Judgment:

Therefore it is
 Considered that said Plaintiff
 do have and recover of said
 Defendant his damages of
 Three Hundred and Eighteen
 Dollars and Thirty five Cents
 in form as aforesaid appeared
 together with his costs and
 Charges by him in this behalf
 expended and have Execution
 therefor

Whereupon said
 Defendant prays an Appeal
 to the Supreme Court of the
 State of Illinois which is
 granted on condition that
 said Defendant enter into
 a bond in the penal sum of
 Twenty Five Hundred Dollars
 with Robert Barber as
 Surety thereon to be filed within
 Thirty days - - -

And afterwards I did on the
first day of July 1858
there was filed in the office
of the Clerk of the Circuit Court
of Cook County in the State
aforesaid a certain "Cephal
Bond" which is in the words
and figures following to wit:

Know all men by these presents
That we John C. Hall
of Africa New York and Robert
Barnes of the City of Chicago
of the County of Cook and State
of Illinois, are duly and
firmly bound unto Abraham
Peshaw also of the same County
and State, in the penal sum
of Twenty five hundred Dollars
lawful 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 the these presents
Witness our hands and seals
this Eighth day of June 1858

The condition of the above obligation is such. That whereas. The said Abraham Nelson did, on the first day of June AD 1858. in the Circuit Court, in and for the County and State aforesaid and of the April Term thereof AD 1858. recover a Judgment against the above Defendant John A. McCall for the sum of Seven hundred and Eighteen Dollars and thirty Nine Cents, besides costs of Suit; from the which said Judgment of the said Circuit Court the said John A. McCall was prayed for an affirmed and Appeal to the Supreme Court of said State —

And therefore, if the said John A. McCall shall duly prosecute his said appeal with Effect. and moreover, pay the amount of the Judgment, costs, interest and damages rendered, and to be rendered, against him in case the said Judgment shall be

31 affirmed in the said Supreme Court, then the above obligation to be void; otherwise to remain in full force and virtue.

Jno A. McHale

Robert Bannister

Paul
Lee

Taken and Entered into
before me, at my office
in Chicago this First
day of July A.D. 1858
Wm. Church Clerk

State of Illinois
Cook County

I William L.
Church Clerk of the said
Circuit Court of Cook County
in the State of Illinois do hereby
Certify that the above and foregoing
transcript is a true perfect and
Complete Copy of the Orders made
and Entered of Record in said
Court as well as of the
Declaration, Pleas, Demurrer,
Verdict and Demurrer, Replication
Affidavit and Instructions, and

Appeal Bond; in a certain Cause
 lately pending in said Court
 on the Common Law Side wherein
 wherein Abraham Dehon was
 Plaintiff and John A.
 McFall was Defendant and
 of the whole. wherein mentioned as
 appears to us of Record —

In Witness Whereof I
 have hereunto set my
 hand and the Seal of our
 said Honorable Circuit
 Court this 24 Day of
 August. 1858.

Wm. Church
 Clerk

Supreme Court
 John A. McFall
 vs
 Abraham Dehon
 Appellant
 Appellee.

And now comes the said John A. McFall
 Appellant by Sents McAllister & Jewett his
 attorneys and says that in the Record and
 proceedings aforesaid there is manifest
 error in this to wit.

1st The Court erred in sustaining the decision
 to the defendants first Special plea.

2^d The judgment was given for the Plaintiff below
 whereas the same should have been given
 for the deft. Wherefore per the error

aforsaid and for other errors appearing in
said Record and proceedings the judgment
aforsaid ought to be reversed &c

Scates McAllister and Jewett
Attys for appellant

John A. McCall
vs
Abraham Behou }

and now comes the said
appellee Abraham Behou by Gorkins Thomas
& Roberts and says that there is no error
in the record & proceedings aforsaid &
the said judgment ought to be affirmed &c
Gorkins Thomas & Roberts

Attys for Appellee

SUPREME COURT.

JOHN A. McNALL,	} POINTS FOR PLAINTIFF IN ERROR.
Pl'ff in Error,	
vs.	
ABRAHAM VEHON,	
Def't in Error.	

I.

The matters set forth in the special plea, to which the Court sustained a demurrer, amount to a justification, and were not admissible under the general issue. In *Demick vs. Chapman*, 11 *Johns R.* 132, the same identical defence was offered under the general issue but rejected by the court. The Supreme Court held, upon writ of error, that the ruling was correct. That to prevent a surprise and enable the parties to go to trial upon equal terms with respect to evidence and proof of facts, it was necessary to plead this defence specially. In *Hanmer vs. Wiley*, 17 *Wend.* 92, this case is cited, with approbation, by Bronson, Justice; and in *Ely vs. Ehle*, 3d *Comstock.* 511, the case and its doctrines are distinctly re-affirmed, in the Court of Appeals.

II.

The Court below was evidently misled by a class of cases, plainly distinguishable from the case at bar, and in which, the pleas gave no color to the plaintiff's action. Here, the plea is obnoxious to no such objection. It concedes the possession of the property in the plaintiff, by a sale which is good between the parties, but which was void as to the creditors of the judgment debtor.

Leyfield's case, *Coke's R.*, part 10, 906.

Stephens' Pl., 204, 205, and cases cited.

1 *Chit. Pl.* 530

SCATES, McALLISTER & JEWETT,
Attorneys for Plaintiff in Error.

221
Mc Wall

W

Verha
a pppts Point

Filed April 29, 1839

L. Leland
Clerk

Cont. County Court Comm.

Albany, N.Y.

221-99

John C. C. Hall

Comptroller's Record and

an Appeal to the Supreme

Court of State of Illinois

Filed April 16 1839

Leheland

Black

Thos. J. Record. 7-100

Charles Thomas (and)

Roberts Appellee

vs. M. C. C. Smith

Appellant.