

14486

No. \_\_\_\_\_

# Supreme Court of Illinois

Fuller et al.

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vs.

Langford et al

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71641  7

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STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

No. 78

*Fuller*

*Langford*

14486

1863

# SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, APRIL TERM, 1863.

HERNANDO A. FULLER and  
ANDREW DEGRAFF,

*Plaintiffs in Error,*

*vs.*

JOSEPH E. LANGFORD and  
GRICE W. THURLBY, for use of  
JOSEPH E. LANGFORD,

*Defendants in Error.*

ERROR TO STEPHENSON.

This was a proceeding of foreign attachment, brought under the Statute, by the defendants in error against the plaintiffs in error—the latter being non-residents.

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estate of Hernando A. Fuller, one of the defendants in the attachment suit,  
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F. C. INGALLS,  
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Abstract

Filed April 22. 1863  
L. Ireland  
Clark

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## BRIEF AND POINTS FOR PLAINTIFFS IN ERROR.

A writ of attachment was sued out of the Stephenson Circuit Court by defendants in Error against the plaintiffs in Error, directed to the Sheriff of Livingston County to execute. The writ was returned by the Sheriff of Livingston County, executed by levy on land of Hernando A. Fuller, one of the defendants in Attachment, and without personal service. The Court, after this writ was returned executed, permitted it to be amended so as to make it directed to the Sheriffs of Livingston and Stephenson Counties respectively. The Sheriff of Stephenson then made a return on the same writ, no property found, and defendants not found in his county.

On motion of the plaintiffs in Attachment, the Court then ordered an "Alias" writ to issue to Stephenson county. This writ issued and was returned by the Sheriff of Stephenson county, no property found, and defendants not found in his county. No other writ issued in this cause. No appearance was made by defendants except to enter their motions presenting the question of jurisdiction. Proof of publication of notice to defendants was made, and their default taken, for want of appearance or plea, and judgment rendered with special execution to sell the property attached.

### 1.

The first writ was not amendable.

*Greene v. Kettleby*, 8 Dowl. P. C. 783.

*Colston v. Berende*, 3 Ib 253.

2 Ib 633.

*Byfield v. Street*, 10 Bing. 277.

*Lewis v. Shelly*, 2 Marsh. 426.

7 Taunt. 146.

2 Gilm. 155.

A void act is incapable of confirmation, or of becoming the basis of a right.

*Bybee v. Ashby*, 2 Gilm. 151.

*Powell v. Harman*, 2 Peters, 241.

### 2.

An alias writ is erroneous, where the first writ should be quashed.

*Rattan v. Stone*, 3 Scam. 540.

The return on the alias writ was made 14 days after it issued, and more than two months before the return day. The officer should have held it until returnable and made due search that he might serve it on defendants. They are entitled to personal notice whenever practicable.

*Morris v. Trustees*, 15 Ill. 266.

### 3.

There was no personal service on the defendants, and no service by levy on property in the county where the suit was commenced. The only service of any writ in the cause was the levy on the land of H. A. Fuller, in Livingston County. The Court had no jurisdiction.

*Hinman v. Rushmore*, 27 Ill. 509.

F. C. INGALLS,  
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78-18

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Brief  
for Plaintiff in Error

Filed April 14, 1863

L. Leland Clerk

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2. The Court erred in overruling the motion of said defendants to arrest the judgment.

3. The Court erred in rendering the judgment aforesaid and ordering special execution to sell the property attached, for want of jurisdiction.

4. The Court erred in not quashing the writ and dismissing the suit, for want of jurisdiction.

F. C. INGALLS,  
For Plaintiffs in Error.

78-18-4

Fuller et al

vs

Langford et al

Abstract

Filed April 22, 1863

L. L. Ireland

Clerk

# SUPREME COURT.

THIRD GRAND DIVISION, APRIL TERM, 1863.

HERNANDO A. FULLER et. al.,  
    *Plaintiffs in Error,* }  
    *vs.* }                      ERROR TO STEPHENSON.  
JOSEPH E. LANGFORD et. al.,  
    *Defendants in Error.* }

## BRIEF AND POINTS FOR PLAINTIFF'S IN ERROR.

A writ of attachment was sued out of the Stephenson Circuit Court by defendants in Error against the plaintiffs in Error, directed to the Sheriff of Livingston County to execute. The writ was returned by the Sheriff of Livingston County, executed by levy on land of Hernando A. Fuller, one of the defendants in Attachment, and without personal service. The Court, after this writ was returned executed, permitted it to be amended so as to make it directed to the Sheriffs of Livingston and Stephenson Counties respectively. The Sheriff of Stephenson then made a return on the same writ, no property found, and defendants not found in his county.

On motion of the plaintiffs in Attachment, the Court then ordered an "Alias" writ to issue to Stephenson county. This writ issued and was returned by the Sheriff of Stephenson county, no property found, and defendants not found in his county. No other writ issued in this cause. No appearance was made by defendants except to enter their motions presenting the question of jurisdiction. Proof of publication of notice to defendants was made, and their default taken, for want of appearance or plea, and judgment rendered with special execution to sell the property attached.

### 1.

The first writ was not amendable.

*Greene v. Kettleby*, 8 Dowl. P. C. 783.

*Colston v. Berende*, 3 Ib 253.

2 Ib 633.

*Byfield v. Street*, 10 Bing. 277.

*Lewis v. Shelly*, 2 Marsh, 426.

7 Taunt. 146.

2 Gilm. 155.

A void act is incapable of confirmation, or of becoming the basis of a right.

*Bybee v. Ashby*, 2 Gilm. 151.

*Powell v. Harman*, 2 Peters, 241.

### 2.

An alias writ is erroneous, where the first writ should be quashed.

*Rattan v. Stone*, 3 Scam. 540.

The return on the alias writ was made 14 days after it issued, and more than two months before the return day. The officer should have held it until returnable and made due search that he might serve it on defendants. They are entitled to personal notice whenever practicable.

*Morris v. Trustees*, 15 Ill. 266.

### 3.

There was no personal service on the defendants, and no service by levy on property in the county where the suit was commenced. The only service of any writ in the cause was the levy on the land of H. A. Fuller, in Livingston County. The Court had no jurisdiction.

*Hinman v. Rushmore*, 27 Ill. 509.

F. C. INGALLS,  
For Plaintiffs in Error.

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Fuller et al

2

Langford et al

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1 Brief  
for Plaintiffs in Error

Filed April 14, 1863

L. Leland et al

STATE OF ILLINOIS,  
SUPREME COURT.

ss. The People of the State of Illinois,

To the Sheriff of Stephenson County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Stephenson County, before the Judge thereof, between Joseph & Sanford and Gise N Shulby for the use of Joseph & Sanford

plaintiffs, and Hernando A. Fuller and Andrew De Graff

defendants, it is said that manifest error hath intervened, to the injury of the said Defendants

as we are informed by their complainants the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law. Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Joseph & Sanford and Gise N Shulby

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Joseph & Sanford and Gise N Shulby

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this twentieth day of September in the year of our Lord One Thousand Eight Hundred and Sixty-two

L. Leland

Clerk of the Supreme Court.  
J. A. Hill Deputy

Honorable J. Sullivan, Clerk

Shirley D. Smith

No. vs.

Joseph E. Langford and  
Gris W. Husby for one of  
Joseph E. Langford

SCIRE FACIAS.

Filed... Jan 28 A. D. 1862

William Clerk.

State of Illinois }  
Stephenson County }

Served the within writ by  
reading the same to the within named Joseph  
E. Langford, on the 15<sup>th</sup> day of September  
AD 1862. The within named Gris W. Husby  
not found in my county.

Dated December 1<sup>st</sup> 1862 } William A. Youngman  
Sheriff of Stephenson  
County Illinois



In the Supreme Court of  
Illinois, Third Grand Division  
April Term AD 1863

Mernando A. Fuller &  
Andrew DeGraff

Plaintiffs in Error

4

Joseph E. Langford &  
Grace W. Shulby, for use  
of Joseph E. Langford,

Defendants in Error.

Error to  
Stephenson

State of Illinois }  
Stephenson County }  
Frederic C. Fugate, of  
said County, being first duly  
sworn depon and says that he is counsel for  
the above named Plaintiffs in Error, that  
Grace W. Shulby, one of the said Defendants  
in Error is a non resident of this State, and  
resides, as this affiant is informed, in the city  
of Detroit in the State of Michigan, |

Fred C Fugate

Subscribed & sworn to before  
me this 2<sup>nd</sup> day of January 1863 }  
W Shaffer Clerk of Circuit }  
Court of said County }  
By E P Hodges Dep

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Hernando A. Fuller  
etal

4

Joseph E. Langford  
etal

affidavit of non residence

Filed Jan 7, 28, 1863,  
L. Island  
Clk.

State of Illinois }  
 LaSalle County } ss

This certifies, that the annexed notice in the case of Hernando A. Fuller and Andr De Graff, as Joseph E. Langford, &c., was published four weeks successfully in the Ottawa Free Trader a weekly newspaper published at Ottawa, LaSalle county, State of Illinois commencing with the No. of said paper issued February 14th, A.D. 1863, and ending with the No. issued March 7th, A.D. 1863; also, that on or about the 14th day of ~~the~~ <sup>the</sup> February, A.D. 1863, I mailed a copy of said paper, containing the annexed notice, ~~and~~ marked with a pen so as to draw his attention to it, to "Grice W. Thurlby, Detroit, Michigan," by paying postage.

Wm Osman  
 Publisher

State of Illinois }  
 County of LaSalle } ss

William Osman being first duly sworn on oath says that the foregoing certificate is true.

Wm Osman

Subscribed & Sworn before me this 21st day of April 1863

L. LeLung Clerk,  
 by J. J. Brown Deputy

STATE OF ILLINOIS, Supreme Court with n and for the Third Grand Division of said State.

Hernando A. Fuller and Andrew De Graff,  
 Plaintiffs in Error.

vs.  
 Joseph E. Langford and Grice W. Thurlby, for use of Joseph E. Langford,  
 Defendants in Error.

Error to the Stephenson County Circuit Court.

Whereas, the said Hernando A. Fuller and Andrew De Graff, have sued out a writ of error from said Supreme Court, to reverse a judgment obtained by said Joseph E. Langford and Grice W. Thurlby, for use of Joseph E. Langford, against Hernando A. Fuller and Andrew De Graff, in the said Circuit Court of Stephenson county, which said writ of error is now pending in said Supreme Court; and whereas, a writ of *scire facias* has been duly issued herein, returnable on the first day of the next term of said Supreme Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, according to law; and whereas, also, it appears by affidavit on file in the Clerk's office of said Supreme Court, that the said Grice W. Thurlby, one of the said defendants in error, is a non-resident of this State, and resides in the city of Detroit, in the State of Michigan;

Now, therefore, you, the said Grice W. Thurlby, the said defendant in error, whose non-residence appears as aforesaid, are hereby notified to be and appear before the justices of said Supreme Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the record and proceedings brought into said Supreme Court on return of said writ of error, and the errors assigned, if you shall see fit, and further to do and receive what said Court shall order in this behalf.

Dated this 9th day of February, A. D. 1863.  
 L. LELAND, CLERK.  
 FRED. C. INGALLS, Atty for Plffs in Error. Feb14-6w



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Puller  
v  
Langford

Proof. Pub. notice  
to non resident

In the Supreme Court of Illinois  
Third Grand Division April Term 1863

Hernando A. Fuller  
& Andrew De Graff  
Plaintiffs in Error

<sup>my</sup>  
Joseph E. Langford by  
Erise W. Thurlby, for  
use of Joseph E. Langford  
Defendants in Error

Error to Stephenson

The clerk will please issue  
writ in the above entitled cause, for service  
on the above named defendants in Error  
(being plaintiffs in the Court below) directed  
to the Sheriff of Stephenson County to execute  
Fred C. Ingalls  
Att. for Pl. in Error

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Fuller et al  
"  
Langford et al

---

Receipt for writ

---

Filed September 10<sup>th</sup> 1862  
L. Leland  
Clerk

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

Pleas before the Honorable  
Benjamin R. Sheldon Judge of the Southern  
Judicial Circuit of the State of Illinois  
begun and held at the Court House in the  
City of Freeport in said County on the 27<sup>th</sup>  
day of September A.D. 1859.

Present: Hon Benjamin R. Sheldon Judge  
W. L. Meacham State Attorney  
C. H. Taggart Sheriff  
S. W. Smitcan Clerk

1  
State of Illinois }  
Stephenson County }<sup>As</sup>

Joseph E. Langford being first duly sworn on his oath deposes and says that Norranda A Fuller and Andrew de Graff lately doing business under the name, style and firm of Fuller & de Graff are indebted to this deponent Joseph E. Langford and Grace W. Shurlby, now for the use of this deponent, in the sum of fifteen thousand two hundred fifty three dollars & thirty six cents ( $\$15253 \frac{36}{100}$  & being in a sum exceeding twenty dollars) and that the nature of said indebtedness is as follows, viz: twelve thousand seven hundred and fifty three dollars and thirty six cents of the said indebtedness is for grading & was done by this deponent and said Shurlby upon the Racine & Mississippi Rail Road in said County & State under and by virtue of a certain contract made and concluded on the 9<sup>th</sup> day of June A.D. 1856 between this deponent and said Grace W. Shurlby of the one part and said Fuller & de Graff under the name and style of Fuller & de Graff of the other part, and twenty five hundred dollars of the said indebtedness is for interest upon the aforesaid sum of  $\$12753 \frac{36}{100}$  since September 1<sup>st</sup> 1859 and for damages on account of a breach of said

Contract made & suffered on the part of said  
 Fuller & de Groff And this deponent further  
 swith that said Hernandez A Fuller and  
 Andrew de Groff are not either of them residents  
 of the State of Illinois - And this deponent  
 swith further that said Thurlby has assigned  
 all his interest and right in said in-  
 vestment to this deponent and further  
 saith not -

Subscribed & sworn to before me } J. E. Langford  
 a Notary Public in & for Buckeye }  
 Township in said County & State }  
 as witness my hand & notarial }  
 seal this 9<sup>th</sup> day of August AD 1859 }

*(Signature)*

Benj<sup>n</sup> Vosoblaser

Notary Public

Filed Aug 10, 1859  
 W. Guiteau clk  
 By Thos North depts

Know all men by these Presents, That we,  
Joseph E. Langford as principal of John Sayer  
William Kream & William W. Robey are  
held and firmly bound unto Hernando A  
Fuller & Andrew de Groff in the penal sum  
of Thirty one thousand dollars to the pay-  
ment of which well and truly to be made  
we bind ourselves our and each of our Heirs  
Executors and Administrators, jointly and  
severally, firmly by these presents. Sealed  
with our seals and dated this 9<sup>th</sup> day of  
August A. D. 1859

The condition of this obligation is such,  
That whereas the above bounden Joseph E.  
Langford has on the day of the date hereof  
made an attachment out of the Circuit Court  
of Stephenson County in the State of Illinois  
at the suit of Joseph E. Langford & Isaac W.  
Shurley for use of Joseph E. Langford  
against the estate of the above named Hernando  
A Fuller & Andrew de Groff late firm of  
Fuller & de Groff for the sum of Fifteen  
Thousand, Two Hundred fifty three &  $\frac{3}{4}$  dollars  
and the same being about to be sued out of said  
Court returnable on the first Monday of  
September next to the term of the Court then  
to be holden at the Court House in Freeport  
in said County. Now if the said Joseph E.

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Langford & Gresi W. Thurlby shall prosecute their suit with effect, or in the case of failure therein, shall well and truly pay and satisfy the said Fernando A. Galler & Andrew de Graff all such costs in said suit, and such damages as shall be awarded against the said Joseph E. Langford & Gresi W. Thurlby his Heirs Executors or Administrators in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment, then the above obligation to be void, otherwise to remain in full force and effect.

Witness Present	}	J. E. Langford	(Seal)
G. S. Brawley		John Sager	(Seal)
		William Keama	(Seal)
		William W. Robey	(Seal)

Filed Aug 10. 1859  
 S. W. Guiteau clk  
 By Thos North Depy

5

Joseph C Langford  
& Eric W. Thurlby  
for the use of Joseph C.  
Langford }  
vs

Stephu County  
Execut Court

Hernando A Fuller &  
Andrew de Graff }

I do hereby enter myself  
security for costs in this cause and ack-  
nowledge myself bound to pay or cause  
to be paid all costs which may accrue  
in this action either to the opposite party  
or to any of the officers of the Court in  
pursuance of the Law of this state.

Dated this 9<sup>th</sup> day of August 1859

J. Wilson Shaffer

Filed Aug 10, 1859

J W Guiteau clk

By Tho North Dep

6 Joseph E. Langford &  
Grisi W. Shurlby  
for the use of  
Joseph E. Langford  
jr

Cy Court of  
the Co Ills  
Sept Te 1859

Hernando A Fuller &  
Andrew de Graff, lately  
doing business under the  
name, style & firm of  
Fuller & de Graff

In Attachment

Am't of Indebtedness  
Mon to \$15253  $\frac{34}{100}$

Clerk will please issue a writ  
of attachment in above entitled cause  
directed to the Sheriff of Livingston Co  
Ills returnable according to law

Smith & Bradley  
for Plaintiff

To J W Guiteau Esq  
Clerk Cir Court  
Steer Co Ill

Filed Aug 10. 1859  
J W Guiteau Clerk  
By Thos North Dep

State of Illinois }  
Stephenson County } 2<sup>rs</sup>

The People of the State of Illinois to the Sheriffs respectively of Stephenson & Livingston Counties, respectively, greeting,

Whereas Joseph E. Langford hath complained on oath to Luther W. Guiteau Clerk of the Circuit Court of Stephenson County, in the State of Illinois that Hernando A. Fuller and Andrew De Groff lately doing business under the name style & firm of Fuller & De Groff are jointly indebted to Joseph E. Langford & Greig W. Thurlby, for the use of Joseph E. Langford to the amount of fifteen thousand two hundred & fifty three dollars & thirty six cents, and oath having been also made that the said Hernando A. Fuller and Andrew De Groff reside out of this State and the said Joseph E. Langford having given bond and security according to the direction in the act in such cases made and provided:

We therefore command you respectively that you respectively attach so much of the estate, real or personal, of the said

8  
Hernando A Fuller & Andrew de Graff  
to be found in your respective Counties  
as shall be of value sufficient to satis-  
fy the said debt and costs, according  
to the said complaint; and such estate  
so attached in your hands to secure, or  
so to provide that the same may be  
liable to further proceedings thereupon  
according to law, at a Circuit Court  
to be holden at Freeport within and  
for the County of Stephenson on the  
first Monday of September next; so as  
to compel the said Hernando A Fuller  
& Andrew de Graff to appear and answer  
the complaint of the said Joseph A Lang-  
ford and Green W. Shurley for the use  
of said Joseph A Langford, and that  
you also respectively summon -  
as garnishee to be and appear before  
the said ~~Circuit~~ Court on the said first  
Monday of September next, then and  
then to answer what may be objected  
against him; when and when you  
respectively shall make known to the  
said Court how you respectively have  
executed this writ, And have you  
respectively then and there this writ.  
Witness Luther W. Gaitan,

9 Clerk of our said Court and the seal thereof  
at Freeport this tenth day of August in the  
year of our Lord One Thousand Eight Hun-  
dred and Fifty nine



J. W. Guitman  
Clerk

State of Illinois }  
Livingston County }  
}

By virtue of the within  
words of attachment I have this day attached  
the following described Real Estate as the  
property of the within named Defendant  
Hernando A Fuller to wit, The North half  
of the North West quarter and the East half  
of the South East quarter and the North  
half of the South West quarter and the  
North east quarter of section No Twenty  
(20) and the South west quarter of the North  
East quarter and the North west quarter  
of the south east quarter and the North  
East quarter of the South West quarter  
and the south half of the North West  
quarter of section No Thirty four (34)  
and the South east quarter of the North

10 East quarter and the North half of the North East quarter of section no Thirty Three (33), all of section no Twenty Eight (28), all of section no Twenty one (21), and the south east quarter of the North east quarter and the North east quarter of the south east quarter of section no Eight (8) and the south west quarter of the south east quarter of section no Twelve (12) and the north west quarter of the north east quarter of section no Thirteen (13) and the south west quarter of section no Fifteen (15) and the south east quarter of the north east quarter of section no Twenty one (21), all of section no Twenty five (25) all of section no Twenty six (26) and the west half of the north east quarter and the east half of the north west quarter of section no Eleven (11) all of said lands being in Township no Twenty seven (27) North of Range 7 East of the 3<sup>rd</sup> Principal Meridian, also the west half of lot one (1) of the north east quarter, and lot one (1) of the north west quarter and the west half of the south east quarter, and the south west quarter of section no One (1)

11 and the north east quarter of the South West quarter, and the west half of the South East quarter, and lots one and ~~two~~ (172) of the North West quarter of section no Two (2) and the east half of the South East quarter and the east half of the north east quarter of section no Eleven (11) all in Township no Twenty Six (26) North of Range 7 East of the 3<sup>rd</sup> Principal Meridian, and all of section no Nine (9) in Township no Twenty five (25) North of Range 8 East of the 3<sup>rd</sup> Principal Meridian, and all of section no Thirty (30) in Township no Twenty seven (27) North of Range 8 East of the 3<sup>rd</sup> Principal Meridian, being in all Six Thousand one hundred and ninety three  $\frac{1}{100}$  acres all being in the County of Livingston in the State of Illinois. The within named defendants Hernando A Fuller and Andrew La Gruff not found in my County.

Noted Patricia Livingston County

August Eleventh AD 1859

Sheriff Fees Levy 50

Certificate & Reading 100

Return  $\frac{10}{\$150}$

Fees paid by Plaintiff's Atty.

William J. Russell

Sheriff of Livingston County

By E. R. Mepher

Deputy

12 I can find no property belonging to the  
Within named Defendants on which  
to levy this attachment in my County  
the within named Defendants not found  
in my County this 24<sup>th</sup> day of March 1860

C. F. Taggart  
Shff  
Stephenson County

Exec Return 10

And afterwards to wit on the 24<sup>th</sup> day of September  
1859 being one of the days of the September Term  
1859 of the Stephenson County Circuit Court  
the following entry appears of record, to wit,

Joseph E Langford &  
Ernie W. Shurlby for the use of  
Joseph E Langford  
J<sup>s</sup>

}  
}  
}  
} Attachment

Hernando A Fuller & Andrew De Graff  
lately doing business as Fuller & De Graff

Now on this day comes the said  
Plaintiffs by Smith & Brawley their Attorney  
and file their Reclamation in this Cause —

13 And afterwards to wit on the 7<sup>th</sup> day of December  
1859 being one of the days of the December Term  
1859 of the Stephenson County Circuit Court  
the following ~~entry~~ appears of record to wit,

Joseph E Langford & Grace W. Shurley }  
for use of Joseph E Langford }  
1p Attachment }  
Bernardo A Fuller & Andrew De Groat }  
lately doing business as Fuller & De Groat }

Now on this day comes the said Plaintiffs  
by Smith & Brawley their Attorneys and  
make and file proof of publication of notice  
to defendants

### Attachment Notice

State of Illinois } In the Circuit & Court }  
Stephenson County } of said County }  
Of the December Term AD 1859

Joseph E Langford, and Grace W. Shurley  
for the use of Joseph E Langford

Bernardo A Fuller and Andrew De Groat, lately  
doing business under the name, style and firm of Fuller & De Groat  
Attachment

14 Public Notice is hereby given to the said Hernando  
A Fuller and Andrew De Graff, that a writ  
of Attachment issued out of the office of  
the Clerk of the said Circuit Court of  
Stephenson County in the State of Illinois  
dated the 10<sup>th</sup> day of August AD 1859 at  
the suit of the said Joseph E Langford  
and Grace W Shurlby for the use of  
Joseph E Langford and against the  
estate of the said Hernando A Fuller  
and Andrew De Graff, for the sum of  
fifteen thousand two hundred and fifty  
three dollars and thirty six cent, directed  
to the Sheriff of Livingston County, in  
the State of Illinois, to execute, which  
said writ has been returned executed, and  
that the same is pending before the  
said Circuit Court of Stephenson County  
Now therefore unless you the said Hernando  
A Fuller and Andrew De Graff shall per-  
sonally be and appear before the said Circuit  
Court of Stephenson County in the State of  
Illinois, on or before the first day of the  
next term thereof, to be holden at the Court  
House in the City of Freeport, in said County  
of Stephenson on the first Monday in the  
month of December AD 1859 give special  
bail, and plead to the said Plaintiff's

action, judgment will be rendered against you and in favor of the said Joseph E Langford and Grace W Shurley for the use of the said Joseph E Langford, and so much of the property attached as may be sufficient to satisfy the said judgment and costs will be sold to satisfy the same.

JM Guiteau Clerk

Smith & Brawley, Plaintiffs Attorneys.

J. W. T. Giles one of the Publishers of the Freeport Weekly Bulletin, a Newspaper published in the City of Freeport County of Stephenson and State of Illinois do hereby certify that the affixed Attachment Notice has been published for four successive weeks in said newspaper; the first insertion being on the 6<sup>th</sup> day of October A.D. 1859 and the last on the 27<sup>th</sup> day of October A.D. 1859 for which we charge \$5.97

W. T. Giles

Filed Dec<sup>r</sup> 4. 1859

JM Guiteau Clk

16 And afterwards to wit on the 9<sup>th</sup> day of  
December 1859 being one of the days of the  
December Term 1859 of the Stephens County  
Circuit Court the following entry appears  
of record to wit:

Joseph E. Langford & Eric W. Threlby }  
for the use of Joseph E. Langford }  
} Attachment  
Hernando A. Fuller v. Andrew DeGrady }

Now came said defendants by  
Turner & Ingalls their Attorneys and file their  
motion to discharge this writ.

And afterwards to wit on the 9<sup>th</sup> day of  
January 1860 being one of the days of the  
December Term 1859 of the Stephens County  
Circuit Court the following  
entry appears of record to wit

Joseph E. Langford, et al }  
for use of Joseph E. Langford }  
} Attachment  
Hernando A. Fuller et al }

Now on this day comes the Plaintiffs  
by Smith & Bradley their attorneys and file



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Now on this day come the plaintiffs by Smith & Bradley their attorneys and file their motion for leave to the Clerk to amend the writ issued in this cause.

Joseph E. Langford et al } Ste. C. Cir. Court  
vs }  
Hernando A. Fuller et al } Dec Term 1859

And now comes the Plaintiffs by Smith & Bradley their attys and move the Court for an order to the Clerk of this Court to amend the writ in this cause so as to make it directed to the Sheriffs of Stephenson & Livingston Counties respectively.

Smith & Bradley  
Plffs Attys

Filed Jan 23<sup>rd</sup> 1860

J. W. Linton Clk

And afterwards to wit on the 24<sup>th</sup> day of January 1860 being one of the days of the December Term 1859 of the Stephenson & Livingston Counties Circuit Court the following entry appears record to wit



In the Circuit Court of Stephenson  
County Illinois, Of the December Term  
A.D. 1859,

Hernando A Fuller &  
Andrew De Graff

vs

Joseph E Langford &  
Luci W. Shurley for ete  
and of Joseph E Langford

And now come the said defendants  
by Turner & Ingalls their attorneys, and  
move the court here that the said  
amended writ in this cause be quashed  
for the reason,

1 That no writ was sued out or  
issued to Stephenson County at any time  
before the said writ directed to Livingston  
County was returned.

2 For the reason that the said writ  
was irregular and void, and the amend-  
ments does not cure the irregularity or  
make the writ valid,

3 For the reason that the said amend-  
ed writ is irregular and invalid.

4 For the reason that one writ of  
attachment cannot issue to two different Counties.

Filed Jan 25. 1860

L. W. Guiteau Clk

Turner & Ingalls  
Attys for Defts



State of Illinois }  
 Stephenson County }  
 The People

of the State of Illinois to the Sheriff of said  
 County Greeting!

Whereas Joseph E Langford hath  
 complained on oath to Luther W. Guiteaux  
 Clerk of the Circuit Court of Stephenson  
 County, in the State of Illinois, that Her-  
 nando A Fuller & Andrew De Groff, <sup>late</sup>  
 lately doing business under the name of Fuller & De Groff, are  
 justly indebted to Joseph E Langford &  
 Gris W. Thurlby for the use of Joseph  
 E Langford to the amount of Fifteen  
 Thousand Two Hundred & fifty three Dollars  
 & thirty six cents and oath having been  
 also made that the said Hernando A.  
 Fuller & Andrew De Groff are not resi-  
 dents of the State of Illinois,

And the said Joseph E Langford  
 having given bond and security according  
 to the directions in the act in such cases  
 made and provided! We therefore do  
 hereby command you that you attach  
 so much of the estate real or personal  
 of the said Hernando A Fuller & Andrew  
 De Groff to be found in your county  
 as shall be of value sufficient to satisfy  
 the said debt and costs according to

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the said Complaint; and such estate so attached in your hands to secure or ed to provide that the same may be liable to further proceedings thereupon, according to law at a Circuit Court to be holden at the Court House in Freeport within and for the County of Stephens on the first Monday of September next so as to compel the said Hernandez A Fuller & Andrew de Goff to appear and answer the Complaint of the said Joseph E Langford & Gai W Shulby for the use of Joseph E Langford and that you also summon <sup>as I am directed</sup> to be and appear before the said Court on the said            day of            next then and there to answer what may be objected against him, when and where you shall make known to the said Court how you have executed this writ And have you then and then this writ,

Witness Luther W. Guiteau  
Clerk of our said Court and the seal thereof at Freeport this 13<sup>th</sup> day of June in the year of our Lord One Thousand Eight Hundred and Sixty

Seal

L W Guiteau  
Clerk

I can find no property belonging to  
 the Within named Defendants in my  
 County, the within named Hernando  
 A Fuller & Andreo de Croff not found  
 in my county, this 27<sup>th</sup> day of June 1860  
 C. H. Sargent Shff  
 Fees Return 10 cts

And afterwards to wit on the 3<sup>rd</sup> day of  
 September 1860 being one of the days of the  
 September Term 1860 of the Stephenson  
 County Circuit Court the following en-  
 try appears of record to wit:

Joseph E Langford et al }  
 vs } Attachment  
 Hernando A Fuller et al }

On motion of  
 said Plaintiff by Bright & Brawley his  
 attorneys, it is ordered that the Sheriff of  
 Stephenson County have leave to amend  
 his return upon the writ issued in this  
 cause in accordance with the facts -  
 And the said Plaintiff make and file

35 proof of publication of Notice to said de-  
fendants -

### Attachment Notice

State of Illinois }  
Stephenson County }<sup>ss</sup>

In the Circuit Court of  
said Stephenson County of the  
September Term AD 1860

Joseph E Langford and Grace  
W Shurlby for the use of  
Joseph E Langford

Attorneys

Hernando A Fuller and Andrew De Goff  
lately doing business under the name, style and firm of Fuller & Goff

Public Notice is hereby given to the said Her-  
nando A Fuller and Andrew De Goff that  
writs of attachment in the above entitled cause  
issued out of the office of the clerk said Circuit  
Court of Stephenson County, Illinois, dated  
August 10<sup>th</sup> AD 1859, and June 13, AD 1860  
at the suit of the said Joseph E Langford  
and Grace W Shurlby, for the use of Joseph  
E Langford, and against the estate of  
the said Hernando A Fuller and Andrew

36 De Groff, for the sum of fifteen thousand  
two hundred and fifty three dollars and  
thirty six cents, one of said writs being  
directed to the Sheriff of said Stephenson  
County, and one of said writs being di-  
rected to the Sheriff of Livingston County  
in the State of Illinois, to execute, which  
said writs have been returned executed,  
and that said Attachment is pending  
before the said Circuit Court of Stephenson  
County. Now therefore unless you the  
said Hernandez A Fuller and Andrew  
De Groff, shall personally be and appear  
before the said Circuit Court of Stephenson  
County, in the State of Illinois, on or be-  
fore the first day of the next term there-  
of, to be holden at the Court House, in  
the City of Freeport, in said County of  
Stephenson, on the first Monday in the  
month of September AD 1860, give  
special bail and plead to the said plaintiffs  
action, judgment will be rendered against  
you and in favor of the said Joseph E  
Langford and Grace W Shurley for the  
use of said Joseph E Langford, and so  
much of the property attached as may  
be sufficient to satisfy the said judg-  
ment, and costs, will be sold to satisfy

27 The same.

J. M. Guiteau Clerk  
Bright & Brawley Plaintiffs Attorneys  
Freeport June 26, 1860

J. P. R. Serogg one of the Publishers of the  
Freeport Weekly Bulletin a newspaper pub-  
lished in the City of Freeport County of Stephenson  
and State of Illinois do hereby certify that  
the affixed attachment Notice has been  
published for four successive weeks in  
said newspaper, the first insertion being on  
the 28<sup>th</sup> day of June A.D. 1860 and the last  
on the 19<sup>th</sup> day of July A.D. 1860 for which  
we charge \$6 <sup>54</sup>/<sub>100</sub>

J. P. R. Serogg  
September 1, 1860,

Filed Sept<sup>r</sup> 3<sup>rd</sup> 1860  
J. M. Guiteau clk

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And afterwards to wit on the 4<sup>th</sup> day of September 1860 being one of the days of the September Term 1860 of the Stephenson County Circuit Court the following entry appears of record to wit

Joseph E Langford et al	}	Attachments
for use of Joseph E Langford vs		
Hernando A Fuller et al	}	

On motion of said Plaintiff by Brawley their Attorney the said defendants having been three times solemnly called came not but made default

And afterwards to wit on the 18<sup>th</sup> day of September 1860 being one of the days of the September Term 1860 of the Stephenson County Circuit Court the following entry appears of record to wit

Joseph E Langford & Grise	}	Attachments
vs W Hurstly for the use of Joseph E Langford vs		
Hernando A Fuller & Andrew De Goff	}	
latey deny business as Fuller & De Goff		

Now on this day came J C Ingalls Esq<sup>r</sup> and enter his motion to Quash the alias

Writ of Attachment issued in this cause, and the Motion is denied, and excepted to. Thereupon came also a jury of twelve good and lawful men, to wit: Jared Sheets and eleven others who are severally sworn to assess the plaintiffs damages - and the hour of adjournment having arrived and the evidence not having been concluded, the further hearing is postponed until tomorrow morning.

And afterwards to wit on the 19<sup>th</sup> day of September 1860 being one of the days of the September Term 1860 of the Stephenson County Circuit Court the following entry appears of record, to wit:

Joseph E Langford & Grevi W.  
 Thurlby for use of Joseph E Langford }  
 vs }  
 Fernando A Fuller & Audred de Groff }  
 lately doing business under the style of Fuller & de Groff }

Now again come the said Plaintiffs by their Attorney, and also come the jury empanelled to assess the plaintiffs damages, and after hearing further evidence the jury return in charge of an officer, and after a short absence, they return into court and say that they assess the plaintiffs damages at Seven Thousand Four Hundred and forty three dollars and forty nine

30 cents. Thereupon the defendants by Ingalls their  
attorney enter their motion to reassess the damages

And afterwards to wit on the 20<sup>th</sup> day of  
September 1860 being one of the days of the Sep-  
tember Term 1860 of the Stephenson County  
Circuit Court the following entry appears  
of record to wit:

Joseph E Langford et al }  
vs }

Fernando A Fuller et al }

} Attachments

Now on this day

came said defendants by Ingalls Esq their  
attorney and file their point and motion to  
reassess the damages and in answer of judg-  
ment in this cause -

In the Circuit Court of Stephenson  
County Illinois Of the September  
Term A.D. 1860.

Hermand A Fuller x }  
 Andrew Mc Gruff }  
 vs }  
 Joseph E Langford and }  
 Ernie W. Thurlby for use }  
 of Joseph E Langford }

And now comes the said  
 defendants by H.C. Ingalls their attorney and  
 move the court to set aside the assessment of  
 damages by the jury in this cause and ask  
 order for a re-assessment, And the said  
 defendants also move the court to arrest the  
 judgment in said cause, And the said de-  
 fendants shad to the court the following  
 reasons in support of their said motions to wit,

1. The assessment was more than the  
 damages proved,
2. The jury adopted a wrong rule in as-  
 sessing the damages,
3. There was improper evidence permitted  
 to go to the jury,
4. The judgment should be arrested because  
 there was no writ issued in this cause to Stephe-  
 son county at the time the said process com-  
 menced, And the writ in this cause and



for the reannment of Damages and arrest of judgments having been duly considered the same is overruled by the Court - It is thereupon considered and ordered that said Plaintiffs have and recover of said Defendants, the sum of Five Thousand Two Hundred Dollars (the same being the amount of their Damages so as aforesaid by the jury assessed after deducting the amount by the plaintiffs remitted) together with their Costs by them about their said in this behalf expended, and that the property attached be sold to satisfy the same, and that they have special execution therefor, and the said Defendants by Turnes & Ingalls their Attorney except to the overruling of the motion in arrest of Judgment

And afterwards to wit, on the 14<sup>th</sup> day of January 1861, being one of the days of the December Term 1860, of the Stephens on County Circuit Court the following entry appears of record, to wit:

Joseph E Langford et al

vs  
Hermann A Fuller et al

Now on this day comes said de-

Attest  
[Signature]

defendants by their attorney and file Bill  
of Exceptions in this cause.

In the Circuit Court of Stephenson County  
Illinois, of the September Term AD 1860  
Plaintiffs A Fuller &  
Andrew Mc Gruff  
Attys:

Joseph E Langford and  
Irene W Thurbly for and of Joseph E Langford

Be it remembered that on the nineteenth day of De-  
cember AD 1859, it being one of the days of the  
December Term AD 1859, of said Stephenson County  
Circuit Court the said defendants filed their motion in  
said Court to quash the writ in this cause, for the  
reason that said writ was sued & issued out of  
said Stephenson County Circuit Court and directed  
to the Sheriff of Livingston County in the State of  
Illinois, and that no writ was or has been sued  
out or issued out of said Stephenson County  
Circuit Court, directed to Stephenson County, And  
afterwards, and on the twenty third day of January  
AD 1860 it being one of the days of said December  
Term AD 1859 of said Court, the said plaintiffs filed  
their cross motion in said Court for an order to  
amend the writ in said cause, so as to make  
it read directed to the Sheriff of Stephenson

and Swainston Counties respectively. And afterwards on the twenty fourth day of January AD 1860 it being one of the days of the said December Term AD 1859 of said court, the said motion came on to be heard by the Court, and the Court thereupon allowed said plaintiffs cross motion to amend said writ, which writ was accordingly amended by clerk & afterwards overruled the said defendants motion to quash said writ, To which ruling of the Court, on overruling said defendants motion to quash said writ, and on allowing said plaintiffs motion to amend the same, the said Defendants by their Counsel then and there excepted, the said writ was amended as aforesaid by the clerk as follows to wit, the words respectively of Stephens & were inserted before the words "Swainston", and the word respectively inserted before the word "Greeting", and the letter s added to the word "Sheriff" and "County", in the direction of the writ, making it read "The People of the State of Illinois to the Sheriffs of Stephens & of Swainston Counties respectively Greeting" &c The word respectively was inserted between the word "you" and "that" and between the words, "you" and "attach" making it read "We therefore command you respectively that you respectively attach so

36 much of the estate " &c The word respective  
was inserted between the words "you" and  
"County," and the letter s added to the word  
"County," making the writ read "to be found  
in your respective Countys" The word  
respectively was inserted between the word  
"also" and "summon" making the writ  
read, "and that you also respectively <sup>be</sup>summar<sup>e</sup>  
The word respectively was also inserted between  
the words "you" and "shall" also between the  
words "you" and "have" also between the  
words "you" and "then" making the writ  
read, "When and where you respectively shall  
make known to the said Court how you  
respectively have executed this writ, and  
have you respectively then and there this writ<sup>e</sup>  
And afterwards on the 25<sup>th</sup> day of January  
A.D. 1860 it being one of the days of the Dec-  
ember Term A.D. 1859 of said Court, the  
said defendants filed their motion to quash  
the said amended writ, for the reason  
that no writ had been issued to the County  
of Stephenson, and that said writ was ir-  
regular and void. Which said motion  
came in to be heard by said Court on the  
sixteenth day of April A.D. 1860, it being  
one of the days of the April Term A.D. 1860 of  
said Court, and thereupon the Court over-

37 ruled the said motion to which ruling of the Court in overruling said defendants motion to quash said amended writ the said defendants by their counsel then and there excepted. The original writ in this cause was issued out of said Stephenson County Circuit Court on the tenth day of August A D 1859 and directed to the Sheriff of Livingston County and returnable on the first Monday of September A D 1859 and by the Sheriff of Livingston County returned into said Court executed by levying on Real Estate of Deft Fuller, without service on said defendants the return being they were not found in his county, on the eleven th day of August A D 1859. After the writ was amended as aforesaid the Sheriff of Stephenson County without any sanction of the Court wrote on it the following return no property found and without service on said defendants March 24<sup>th</sup> A D 1860, and no other writ had then issued to Stephenson County. And afterwards to wit on the sixteenth day of April A D 1860 it being one of the days of the April Term A D 1860 of said Court the said plaintiff moved the Court to issue an alias writ of attachment in this cause to the Sheriff of Stephenson County, which said writ was on the said day granted by the

Court, and an alias writ issued out of said Court on the 13<sup>th</sup> day of June AD 1860, directed to the Sheriff of Stephenson County returnable on the first Monday of September AD 1860 which said alias writ was returned by said Sheriff on the twenty seventh day of June AD 1860, no property found, and without service on said defendants, they not being found in his county, and no other writs or writs issued in said cause. And afterwards to wit on the eighteenth day of September AD 1860 it being one of the days of the September Term AD 1860 of said Court, the said defendants filed their motion to quash the alias writ of attachment in said cause for the reason that no writ of attachment had issued to Stephenson County in this cause before or at the time the said writ was issued to Livingston County, nor until the said alias writ was issued as aforesaid on the 13<sup>th</sup> day of June AD 1860. And thereupon the Court overruled the said defendants motion to quash the said alias writ, to which ruling of the Court in overruling said defendants motion said defendants by their counsel then and there excepted.

And afterwards to wit on the nineteenth day of September AD 1860, it being one

39 of the days of the September Term AD 1860  
of said court, a jury was called &c, and duly  
sworn to assess the plaintiffs damages in  
said cause, and said jury thereupon assessed  
the said damages at the sum of Seven Thousand  
said four hundred and forty three dollars  
and forty nine cents, And afterwards to  
wit on the Twentieth Day of September  
AD 1860, it being yet of the September  
Term AD 1860 of said court said defendants  
by their counsel filed their motion in arrest  
of judgment in said cause for the reason  
that no writ issued to Stephenson county  
at the time this suit was commenced, and because  
the writs in this cause and each of them  
were irregular and void, and should have  
been quashed, and for other reasons ex-  
plicit on the record, And afterwards on  
the eleventh day of January AD 1861 it  
being one of the days of the December Term  
AD 1860 of said court, said plaintiffs  
having remitted \$2243.49 of said verdict,  
the said court overruled the said defendants  
motion in arrest of judgment and read and  
judgment in favor of said plaintiff and  
against said defendants for the sum of  
Fifty two hundred dollars & costs of suit and  
awarded a special execution to sell the

40 property attached, to which ruling of the Court  
in overruling said defendants motion in  
arrest of Judgment in said cause, and  
in rendering the judgment aforesaid, the  
said defendants by their counsel did then  
and then except, and pray that their  
Bill of Exceptions may be signed and sealed  
by the Court which is done.

Benj<sup>r</sup> R. Sheldon



Filed Jan 14, 1861.

J. W. Shaffer Clerk

per L. M. Guiteau Depy.

And afterwards <sup>on</sup> the Nineteenth day of March  
A. D. 1861 the following Process was filed  
in said cause to wit:

Stephenson County Circuit Court.

Bernardo A. Fuller }  
+ Andrew de Graff }

vs

Joseph E. Langford }  
and Grace M. Shulby for }  
use of Joseph E. Langford }

The Clerk will please  
prepare a full and complete Transcript of  
the record in the above entitled cause

Excepting therefrom the following papers on the  
files - to wit:

The declaration in said cause

The Executions & fee bills issued in said cause

Fred C Ingalls

atty for depts

State of Illinois }  
Stephenson County } Clk.

A. J. Wilson Shaffer, Clerk  
of the Circuit Court in and for said  
County do hereby certify that the foregoing  
is a full and complete Transcript of the  
Record and of the papers on file in said  
above entitled cause, as appears from the  
Records and files in my Office. Excepting  
the Declaration, Executions & fee bills in said  
cause -

In Testimony whereof I have hereunto  
set my hand and affixed the seal of said  
Court at Freeport, this 19<sup>th</sup> day of March  
A.D. 1863.

A. J. Wilson Shaffer, Clerk  
per C. K. Hodges, Dep





In the Supreme Court of Illinois  
Of the Third Grand Division  
April Term AD 1863

Hernando A. Fuller by  
Andrew DeGraff — Plaintiffs in Error

27

Joseph E. Langford + Geo  
W. Shulby, for use of Joseph  
E. Langford. — Defendants in Error

And now come the said <sup>and Andrew DeGraff</sup> Hernando  
A. Fuller, by Fred. C. Ingalls, their attorney, and  
say that in the record aforesaid, there is  
Error to wit -

- 1 The Court Erred in overruling the motions of the defendants below, and each of them to quash the writs
- 2 The court erred in overruling the motion of said defendants to amend the judgment
- 3 The court erred in rendering the judgment aforesaid, and ordering special execution to sell the <sup>property</sup> ~~land~~, attached, for want of jurisdiction
- 4 The court erred in not quashing the writ, and dismissing the writ for want of jurisdiction

And the said Hernandez  
A. Fuller and Andrew de Graff pray that the  
judgment aforesaid, for the errors aforesaid  
may be reversed &c

Frid<sup>o</sup>. C. Ingley  
atty for Petrs in Error

78-18

Fuller et al

"

Langford et al

Records & Errors

Filed Apr. 14, 1863,

L. Seland

Clk.

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

GEORGE R. ARCHER *et al.* }  
                                  *vs.* }  
WILLIAM CLAFLIN *et al.* }

## BRIEF FOR PLAINTIFFS IN ERROR.

1. The affidavits, both original and amended, were clearly insufficient. They were founded upon *information and belief*, which will not do.

*Dyer vs. Flint*, 21 Ill. 80.

2. The final judgment was rendered by default. If defendants were out of Court then, they may now take advantage of any error in the proceedings, as were done in the case of *Dyer vs. Flint*, 21 Ill. 80.

3. There was a motion filed below to dismiss for want of sufficient affidavit, which was overruled and plaintiff had leave to amend. He did amend, but his amended affidavit was no better than the original. The record therefore shows that the Court erred in rendering judgment without a sufficient affidavit. It had no jurisdiction.

4. The rule on defendants to plead was made on the 29th November, and the next day the plea was filed. It was also agreed by counsel that defendant might plead on that day. But it is urged the plea was in *abatement*. To this we answer, there was no stipulation as to the kind of plea which should be filed, and there was no rule of Court requiring the plea to be filed sooner.

In fact, the plaintiff on the next day (Dec. 1st) filed his amended affidavit. To this new affidavit defendant had a right to plead in abate-

meet, because as to that he was guilty of no laches. The plea stood on the record as an answer to that portion of the affidavit which asserted that Archer was about to remove his property to the injury of his creditors. The plea was rightfully on the files, it was in apt time, and the Court had no right to set it aside. Nor could the Court render judgment by default, without first making order for defendants to plead anew. A rule should have been entered for a new plea, and if not forthcoming, then perhaps a judgment might have been rendered against them. Ten days ought to have been allowed defendants after the filing of the new affidavit, to plead thereto.

5. There was a fatal variance between the note and declaration. The words "without defalcation or discount" are omitted, and the note is described in the declaration as being due on the 17th, whereas it was due on the 16th.

But even if plea was not filed in time, plaintiffs below waived their right to object by taking other steps in the cause before making the motion to strike the plea from the files.

1 Scam. 250.  
2 Scam. 463.  
5 Gilm. 461.

WEAD & POWELL,  
*Attorneys for Plaintiffs.*

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Archer

vs

Claplin

Brief-

Filed Apr. 28-1863

Leland

Clerk

STATE OF ILLINOIS, }  
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the County of Henderson Greeting:

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Courts of Henderson County, before the Judge thereof, between William Claflin, John A. Allen, Isaac Emerson and Nathan D. Noyes parties under the name & style of Claflin & Allen & Co.

plaintiffs and George R. Archer and Marcellus Archer parties in trade under the name & style of G. Archer & Brother

defendants, it is said manifest error hath intervened, to the injury of the aforesaid defendants

as we are informed by their complaints and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment thereof be given, you distinctly and openly, without delay, send to our Justices of the Supreme Court the record and proceedings of the plaint aforesaid, with all things touching the same, under your seal, so that we may have the same before our Justices aforesaid at Ottawa, in the County of La Salle, on the first Tuesday after the third Monday in April next, that the record and proceedings, being inspected, we may cause to be done therein, to correct the error, what of right ought to be done according to law.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 1<sup>st</sup> day of September in the Year of Our Lord One Thousand Eight Hundred and Sixty two

L. Selaw

Clerk of the Supreme Court.  
J. B. Rice Deputy

STATE OF ILLINOIS

Supreme Court

To the Clerk of the

Court for the County

of the State of Illinois

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*Faint handwritten text, possibly a case title or description, including the word "SHERIFF".*

Archer

No. vs. Clufflin

WRIT OF ERROR.

*This writ of error is made a supersedeas and such to be obeyed by all concerned*

FILED

*L. Leland Clerk*  
*Sept 17 1862*  
A. D. 1862

*L. Leland*

*Clerk.*



*Faint handwritten notes and bleed-through from the reverse side of the page.*

# SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION,

APRIL TERM THEREOF, A. D. 1863.

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GEORGE R. ARCHER *et al.* }  
                                  *vs.* }  
WILLIAM CLAFLIN *et al.* }

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4. The rule on defendants to plead was made on the 29th November, and the next day the plea was filed. It was also agreed by counsel that defendant might plead on that day. But it is urged the plea was in *abatement*. To this we answer, there was no stipulation as to the kind of plea which should be filed, and there was no rule of Court requiring the plea to be filed sooner.

In fact, the plaintiff on the next day (Dec. 1st) filed his amended affidavit. To this new affidavit defendant had a right to plead in *abate-*

meet, because as to that he was guilty of no laches. The plea stood on the record as an answer to that portion of the affidavit which asserted that Archer was about to remove his property to the injury of his creditors. The plea was rightfully on the files, it was in apt time, and the Court had no right to set it aside. Nor could the Court render judgment by default, without first making order for defendants to plead anew. A rule should have been entered for a new plea, and if not forthcoming, then perhaps a judgment might have been rendered against them. Ten days ought to have been allowed defendants after the filing of the new affidavit, to plead thereto.

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1 Scam. 250.  
2 Scam. 463.  
5 Gilm. 461.

WEAD & POWELL,  
*Attorneys for Plaintiffs.*

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Archer

vs

Claplin

Brief-

Filed Apr. 28. 1863

L. Gilman

Clark

Know all Men by these Presents, That George R. Archer  
& Marcellus Archer

as principals and

as security, are held and firmly bound

unto William Claflin, John A. Allen, Isaac Emerson  
and Nathan D. Noyes

in the penal sum of eight hundred dollars  
good and lawful money of the United States, for the payment of which, well and truly  
to be made, ~~the said~~ we

bind ourselves our heirs, executors and administrators,  
jointly, severally and firmly by these Presents.

Witness, our hands & seals

this twentieth day of June A. D. 1862

The Condition of the above Obligation is such, That, whereas the above named  
William Claflin John A. Allen, Isaac Emerson  
& Nathan D. Noyes

did, at the November Term of the Circuit Court,  
held in and for the County of Henderson in the  
State of Illinois, A. D. 1857 recover a judgment against the above bounden George  
R. Archer and Marcellus Archer  
in a certain action of Assumpsit

for the sum of four hundred  
and eighty dollars and seventy two cents Damage  
and costs of suit to reverse which said judgment, the  
said George R. Archer & Marcellus Archer

have sued out a Writ of Error from the Supreme Court, within and for the Third  
Grand Division of said State, in which Writ of Error is made a Supersedeas. Now if the  
said George R. Archer and Marcellus Archer

shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said  
judgment, and all judgments, costs, interest and damages which the said Supreme Court  
shall adjudge against them in case said judgment shall be  
affirmed and abide the order and judgment of said Su-  
preme Court in this behalf, then this obligation is to be void, otherwise to remain in full  
force and effect.

George R. Archer [SEAL]  
Marcellus Archer [SEAL]  
N. D. Noyes [SEAL]  
W. C. Hartford [SEAL]  
Edmund Quincy

State of Illinois }  
County of Henderson }  
I Hugh S. Thomson after  
first being duly sworn upon oath the State  
that I am Clerk of the Circuit Court  
of said County that I am acquainted  
with the writter named John P. Ashe  
W. S. Hartford and Edmund  
Gentry and their previous  
Circumstances and that they  
are worth over and above their  
debts up of them and  
heirs

Hugh S. Thomson

Subscribed and sworn to before the undersigned Clerk of the  
County Court of said Henderson County, the Seal thereof being hereunto  
affixed at my office in Osprey, this 13th day of July. A.D. 1862

William Hopkins Clerk

By R. S. McArthur Deputy

No.

SUPREME COURT,

THIRD GRAND DIVISION.

08.

SUPERSEDEAS BOND.

Filed September 1st 1862

L. Selman Clerk

I Hugh L Thomson Clerk of the Circuit Court in and for the County of Henderson in the State of Illinois. do certify that I am acquainted with John C Archer Winfield S Hartford and Edmund Genung of Said County and that they are worth and Responsible for more than Six Thousand Dollars.

Witness my Hand and Official Seal this 13<sup>th</sup> day of June D 1862

Hugh L Thomson  
Clerk

