

14501

No. _____

Supreme Court of Illinois

Fuller et al

vs.

Irvin

71641  7

20

STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 80

Fuller
vs.
Dunn

1863

14501

STATE OF ILLINOIS,
SUPREME COURT. } ss. The People of the State of Illinois,

To the Sheriff of Winnebago 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
William Irwin

plaintiff, and Hermans A Guller and Andrew De
Graff

defendants, it is said that manifest error hath intervened, to the injury of
the said plaintiff 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 William Irwin

that he 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
he 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 William Irwin

notice, together with this writ.

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

L. Leland

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

Memoranda of Charles T.

Shawver O. B. Craft

No.

vs.

William Irwin

SCIRE FACIAS.

Filed

Sept. 28, A. D. 1862,

A. Wilson Clerk.

State of Illinois }
Winnebago County } Served the within writ by
reading the same to the within named
William Irwin, on the 22 day of September A.D. 1862

W. J. Wpnight
Dated September 22 1862

Sheriff of Winnebago County
Received my fees for F. E. Gray's
sums & mileage & Return \$1.00

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

Hernando A. Fuller	}	Error to Stephenson
& Andrew De Graff		
Plaintiffs in Error		
"		
William Irvin	}	
Deft in Error		

The Clerk will please
issue writ in the above entitled cause
for service on the above named de-
fendants in Error (being plaintiffs in the
court below) directed to the Sheriff of
Stephenson County to execute, and also
a writ directed to Sheriff of Minnebago
County

Tru C Ingalls
Atty for Plffs in Error

Fuller et al
"
Irvin

Precepe for writ

Filed September 10. 1822

L. Leland
Clerk

United States of America }
State of Illinois }
County of Stephenson } f

Pleas before the Honorable
Benjamin R Sheldon Judge of the
Fourteenth Judicial Circuit of the State
of Illinois begun and held at the Court
House in the City of Freeport in said
County on the First day of September AD, 1859
Present Hon Benjamin R Sheldon Judge
W D McAdams State Attorney
C. H. Gaggart Sheriff
S W Guiteau Clerk

1
State of Illinois }
Stephenson County }^d

William Irovi being first
duly sworn on his oath deposes and says that
Hernando A Fuller & Andred Mc Gaff lately doing
businip under the name style & firm of Fuller &
Mc Gaff are indebted to this deponent in the sum
of fifty five hundred dollars, and that the nature
of said indebtedness is as follows, viz. Four
thousand dollars of said indebtedness is for grading
and masonry done by this deponent upon the
Racine & Mississippi Rail road in said County
& State under & by virtue of a certain contract
made & concluded on the ninth day of June
A.D. 1856 by & between this deponent of the one
part & said Fuller & said Mc Gaff under the
name style & firm of Fuller & Mc Gaff of the
other part and fifteen hundred dollars of the
said indebtedness is for interest upon the afore-
said sum of four thousand dollars & for damages
on account of a breach of said contract on the
part of said Fuller & Mc Gaff & this deponent
further says that said Hernando A Fuller &
said Andred Mc Gaff are now neither of them res-
idents of the State of Illinois -

Subscribed & sworn to before me } William Irovi
a notary Public for the township }
of Buckeye in said County & State }

as witness my hand & Notarial seal
 the 9th day of August A.D. 1859
 Benjⁿ Comblaser
 Notary Public,



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

Know all men by these presents, That we,
 William Irons, as principal & J Wilson Shopper
 Samuel J Davis & William Kreamer, are held
 and firmly bound unto Fernando A Hall
 & Andrew De Croff in the penal sum of
 Eleven Thousand dollars to the payment
 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 9th day of August
 A.D. 1859.

The condition of this obligation is such
 that whereas the above bounden William

Irom has on the day of the date hereof, procured
an attachment out of the Circuit Court of
Stephenson County in the State of Illinois
at the suit of William Irom against
the estate of the above named Hernandez
A Fuller & Audred Mc Guff late firm of
Fuller & Mc Guff, for the sum of Fifty
five Hundred 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 William Irom shall prose-
cute his suit with effect, or in the case of
failure therein, shall well and truly pay and
satisfy the said Hernandez A Fuller & Audred
Mc Guff all such costs in said suit and such
damages as shall be awarded against the
said William Irom his Heirs Executors or
Administrators in any suit or suit 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 }
F W Bradley }

William Irom
McShaffer
J J Davis
William Kreamer

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Filed Aug 10. 1859
 L W Guiteau clk
 By Thos North Dep

Williami Ivon	} In the Cir Court of Stephenson Co Ill
77	
Hernando A Fuller &	} Attachments out of indebtedness Sworn to \$5500.00
Andrus Lee Graff	
latey doing business under the name style firm of Fuller & Graff	

Clerk with please issue a writ
 of Attachment in the above entitled cause
 directed to the Sheriff of Livingston County
 in the State of Illinois returnable ac-
 cording to law &c

Smith & Bradley
 for Plffs

To L W Guiteau Esqr
 Clk Cir Court
 of Ste Co Ill

Filed Aug 10. 1859
 L W Guiteau clk
 By Thos North Dep

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State of Illinois }
 Stephenson County } The People of the State Of
 Illinois to the Sheriffs respectively
 of Stephenson & Livingston Countys respectively
 Greeting: Whereas William Irvine hath
 complained on oath to Luther W. Quintan
 Clerk of the Circuit Court of Stephenson County
 in the state of Illinois that Hernando A. Fuller
 & Andrew DeGraff late doing business as
 Fuller & DeGraff & jointly indebted to the said
 William Irvine in the sum of Fifty five
 Hundred Dollars and oath having been also
 made that the said Hernando A. Fuller &
 Andrew De Graff are not residents of the
 State of Illinois - And the said William Irvine
 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 Hernando A. Fuller & Andrew De
 Graff to be found in your respective Countys
 as shall be of value sufficient to satisfy
 the said debt and costs, according to the
 said complaint; and such estate so
 attached in your hands to secure a so
 to provide that the same may be liable
 to further proceedings thereupon, according

6 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 to appear
and answer the complaint of the said
William Brown and that you also
respectively summon as garnishes
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 respectively
make known to the said Court how you
respectively have executed this writ.
And have you respectively then and there
this writ,

Witness Luther A. Gintan
Clerk of our said Court and the
Said thing at Freeport this
10th day of August in the year
of our Lord one thousand eight
Hundred and fifty nine —

L A Gintan

Clerk



State of Illinois
Livingston County)

By virtue of the within writ
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
East quarter and the South half of the
North West quarter, of section no thirty four
(34) and the South east quarter of the North
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

8
fifteen (15) and the south east quarter of the
North east quarter of section no twenty nine
(29) 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^d 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) and the north east quarter of the
South west quarter and the west half of
the South east quarter and lots one and two
(1 & 2) 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 town-
ship no twenty six (26) North of Range 7
East of the 3^d principal meridian and all
of section no nine (9) in township no twenty
five (25) North of Range 8 East of the 3^d
principal meridian, and all of section
no thirty (30) in township no twenty seven (27)
North of Range 8 East of the 3^d principal
meridian being in all six thousand one

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hundred and ninety three & $\frac{1}{100}$ acres all being in
the County of Livingston in the State of Illinois
The within named defendants Hernandez &
Huller and Andrew Mc Guff not found in my
County -

State Pontiac Livingston County Ill August Eleventh
Ad 1859

William T Russell

Sheriff fee Levy 50
Certificate & Recording 1.00
Return 1.00
1.60

Sheriff of Livingston County
By E R Maples Deputy

Fees paid by Plaintiffs Atty

I can find no property belonging to the Within
named defendants on which to levy in my
County, the within named defendants not
found in my County this 24th day of
March 1860,

C H Saggast
Shff
Stephenson County

Fees Return 10

#

10

And afterwards to wit on the 24th 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,

William Irwin	}	Attachment
p		
Hernando A Fuller &		
Andrew De Groff lately doing business as Fuller & De Groff		

Now on this day comes
the said Plaintiff by Smith & Brawley their
attorney and files their declaration in this suit.

And afterwards to wit on the 7th 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:

William Irwin	}	Attachment
p		
Hernando A Fuller &		
Andrew De Groff lately doing business as Fuller & De Groff		

Now on this day comes
the said Plaintiff by Smith & Brawley his
attorney and makes and files proof of publication

of notice to defendants -

Attachment Notice.

State of Illinois }
Stephenson County }

In the Circuit Court of said
County Of the December Term 1859

William Irons
vs

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

Attachment

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 10th day of August A.D. 1859 at the
suit of the ^{said} William Irons and against the
estate of the said Hernando A Fuller and
Andrew de Graff for the sum of fifty five
hundred dollars, 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 under you the said Hernando
A Fuller and Andrew de Graff shall

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personally 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 filed to the said plaintiffs action, judgment will be rendered against you and in favor of the said William Irons, 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.

L W Guiteau Clerk
Smith & Hawley Plaintiffs Attorneys

J. W. J. 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 6th day of October AD 1859 and the last on the 27th day of October AD 1859, for which we charge \$5.25

W J Giles

filed Dec 7. 1859
L W Guiteau Clerk

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And afterwards to wit on the 9th day of December 1859
being one of the days of the Neece & Term 1859 of
the Stephenson County Circuit Court the following
entry appears of record to wit,

William Irwin	}	Attachments
up		
Hernando A Fuller x		
Andrew Mc Gruff	}	

Now came the defendants
by Turner & Ingalls and file their motion to
quash this writ.

And afterwards to wit on the 9th day of January
1860 being one of the days of the Neece & Term
1859 of the Stephenson County Circuit Court
the following entry appears of record to wit,

William Irwin	}	Attachments
up		
Hernando A Fuller et al		

Now on this day came
the plaintiff by Smith & Beverly his attorney
and file their motion for a writ of attachment
to issue to the Sheriff of Stephenson County.

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Wm Ison

p

Hernando & Fuller et al

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St Louis Court

Dec Term 1859

And now comes the plaintiff
and moves the Court for an order to the Clerk
of this Court to issue subpoena a writ
of attachment to the Sheriff of Stephenson
Co. in this cause.

Smith & Sawley.

Philip M. W.

Filed Jan 9. 1860

L W Guiteau Clk.

And afterwards to wit on the 23rd day of January
1860 being one of the days of the December
Term 1859 of the Stephenson County Circuit
Court, the following entry appears of record,
To wit:

William Ison

p

Hernando & Fuller et al

}

Attachment

Now on this day

comes the Plaintiff by Smith & Sawley
his attorney and files his motion for leave
to the Clerk to amend the writ issued in

this cause -

Wm Ironi
 p
 Fernando A Fuller et al
 The Co Cu Court
 Dec Term 1859

And now comes
 the Plaintiff by Smith & Bradley his attorney
 and moves the Court for an order of leave
 to the Clerk of this Court to amend the
 writ in this cause, so as to make it di-
 rected to the Sheriff of Stephens & Livingston
 counties respectively

Smith & Bradley
 Atty at Law

Filed Jan 23rd 1860
 L. W. Guitman Clk

And afterwards to wit on the 24th day of Jan-
 uary 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,

William Ironi
 p
 Fernando A Fuller et al
 vs
 Mackman

On motion of the Plaintiff
 by his attorney it is ordered that leave be given

to the Clerk to amend the writ issued in this cause.

And afterwards took on the 25th day of January 1860 it being one of the days of the December Term 1859, of the Stephenson County Circuit Court, the following entry appears of record to wit,

William Irvine	}	Attorneys
vs		
Herrando A. Fuller et al		

Now come defendants by Turner & Ongate their attys and file their motion to quash the amended writ in this cause.

In the Circuit Court of Stephenson
County Illinois of the December Term AD 1859

Herrando A. Fuller &	}
Andres de Graff	
vs	
William Irvine	

And now comes the said defendants by Turner & Ongate 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. That the said writ was irregular & void and the amendment does not even the irregularity or make the writ valid.

3. That the said amended writ is irregular and invalid.

4. That one writ of attachment cannot issue to two different counties.

Turner & Ingalls
Deft Attys

Filed Jan 25. 1860.

J. R. G. W. C. K.

And afterwards to wit on the 16th day of April 1860 it being one of the days of the April Term 1860 of the Stephenson County Circuit Court the following entry appears of record to wit,

William Provi 2
vs 3 Attachments

Hernando A. Fuller et al

Now came on to be heard the defendants motion to quash this writ of attachment and after arguments of counsel the motion is overruled to which ruling the

defendants by their attorneys except the motion of the Plaintiff by Smith & Bruley his attorneys it is ordered that an alias writ of attachment issue in this cause, to the Sheriff of this County to execute.

State of Illinois }
 Stephenson County }
 The People of the State
 of Illinois to the Sheriff of
 said County, Greeting: Whereas William Iron
 hath complained on oath to Luther W. Gantman
 Clerk of the Circuit Court of Stephenson County
 in the State of Illinois that Hernando A. Fuller
 & Andrew De Graff lately doing business as
 Fuller & De Graff are jointly indebted to him
 in the sum of Fifty five hundred dollars
 and oath having been also made that the
 said Hernando A. Fuller & Andrew De Graff
 are not residents of the State of Illinois and
 the said William Iron having given bond
 and security according to the direction in the
 act in such cases made and provided,
 We therefore as we have heretofore commanded you
 that you attach so much of the estate real
 or personal, of the said Hernando A. Fuller
 & Andrew De Graff to be found in your County

as shall be of value sufficient to satisfy
the said debt and costs according to the said
complaint; and such estate so attached in
your hands to secure or as to provide that
the same may be liable to further pro-
ceedings thereupon, according to law, at
a Circuit Court to be holden at the Court
House in Freeport within and for the County
of St. John on the first Monday of Sep-
tember next, so as to compel the said Her-
nando & Fuller & Andrew Mc Guff to
appear and answer the complaint of the
said William Brown, and that you
also summon as garnishee 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 there
this writ.

Witness Luther W. Guiteau Clerk
of our said Court and the seal
thereof at Freeport this 13th day
of June in the year of our
Lord One Thousand Eight hundred
and sixty.

L. W. Guiteau Clerk



I can find no property belonging to the within named defendants in my County, the within named ~~Hermand~~ A Fuller & Andrew De Groot Not found in my County. this 27th day of June 1860.

C H Gaygart Sheriff

Fees Retainer 10 cts

And afterwards to wit on the 3rd day of September 1860 it being one of the days of the September Term AD 1860 of the Stephenson County Circuit Court, the following entry appears of record to wit,

William Brown

v

Hermand A Fuller et al

}
}
}

Attachment

On motion of said

Plaintiff by Bugh & Bradley his attorneys it is ordered that the Sheriff of Stephenson County have leave to amend his return upon the writ issued in this case in accordance with the facts, and the said Plaintiff makes & files proof of Publication of Notice to said defendant,

Attachment Notice.

State of Illinois }
 Stephenson County } In the Circuit Court of said
 Stephenson County of the September
 Term A.D. 1860.

William Brown

v

Attachment

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

Public Notice is hereby given to the
 said Hernando A. Fuller and Andrew McCreff
 that writs of attachment in the above entitled
 cause, issued out of the office of the Clerk of
 the said Circuit Court of Stephenson County
 Illinois, dated August 10th A.D. 1859, and
 June 13th A.D. 1860 at the suit of the said
 William Brown and against the estate of
 the said Hernando A. Fuller and Andrew
 McCreff for the sum of fifty five hundred
 dollars; one of said writs being directed to
 the Sheriff of said Stephenson County, and
 one of said writs being directed to the Sheriff
 of Livingston County in the State of Illinois
 to execute, which said writs have been
 returned executed, and that said attach-
 ment is pending before the said Circuit
 Court of Stephenson County. Now, therefore
 unless you the said Hernando A. Fuller

and Andrew De Croff shall personally 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 September A.D. 1860, give special bail and plead to the said Plaintiff action, judgment will be rendered against you and in favor of the said William Brown 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.

L. W. Linton Clerk
 Bright & Bradley, Pltffs Attys
 Freeport June 26, 1860

I J. R. Scruggs 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 28th day of June A.D. 1860 and the last on the 19th day

of July AD 1860 for which we charge \$5.26 ¹⁰⁰
 J R Serogg
 September 1. 1860.

Filed Sept 3rd 1860

J W Whitman clk

And afterwards to wit on the 4th day of September
 1860 being one of the days of the September
 Term AD 1860 of the Stephenson County Ci-
 vilt Court, the following entry appears of
 record to wit:

William Brown
 vs
 Attachment
 Fernando A Fuller et al.

On motion of said
 Plaintiff by Brewster his attorney, the said
 defendants having been three times solemnly
 called came not but made default.

And afterwards to wit on the 18th day of September
 1860 being one of the days of ~~the September Term~~
~~County Court~~ of the Stephenson County Circuit Court
 AD 1860, the following entry appears of
 record to wit:

William Ironi

P

Hernando A Fuller & } Attack men
 Andres de Gaff, lately }
 doing business as Fuller & de Gaff

Now on this day comes Fred^d C Ingalls Esq and enters his motion to Quash the alias writ of attachment issued in this cause, and the Motion is denied and excepted to -

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

William Ironi

P

Hernando A Fuller & } Attack men
 Andres de Gaff lately }
 doing business as Fuller & de Gaff

And now on this day comes the said Plaintiff by Bright & Bailey his attorneys and also came a jury, of Twelve good and lawful men, to wit, James S. Saggart and eleven others who were severally duly sworn to assess the Plaintiff's damages

and after hearing the evidence adduced the jury retire in charge of an officer to consider of their verdict, and after a short absence they return into Court and say that they assess the plaintiffs damages at Four thousand, three hundred and twenty four dollars and fourteen cents. And the said defendants by Ingalls their attorney enter their motion to reassess the damages -

And afterwards to wit on the 20th day of September 1860 being one of the days of the September Term 1860 of the Stephenson County Circuit Court, the following entry of record of record to wit

William Irvine	}	Attachments
do		
Hermand A. Fulton et al	}	

Now on this day comes said defendants by Ingalls Esq^r their attorney and file their points and motion to reassess the damages and in arrest of judgment in this cause.

In the Circuit Court of Stephenson
County Illinois 9th September Term 1860

Hernando A. Fuller }
 & Andrew Mc Guff }
 vs }
 William I. Iovine }

And now come the said
 Defendants by G. L. Ingalls their attorney and
 moves the Court that the assessment of
 Damages by the jury in this cause be set
 aside and a re-assessment ordered.

And the said defendants also move the Court
 in arrest of judgment in said cause. And
 the said defendants shew to the Court here
 the following reasons in support of their
 said motions.

1. The Damages were more than the
 amount proved.

2. The jury adopted a wrong rule in the as-
 sessment of damages.

3. Improper evidence was permitted to
 be given to the jury.

4. The judgment in this cause should be
 arrested because there was no writ issued to
 Stephenson County at the time this suit was
 commenced. And the writs in this cause
 and each of them were irregular and void.

and should have been quashed, and for other reasons apparent on the record.

Fred C Ingalls

Atty for Defendants

Filed Sept 20/60

SW Kuteau clk

And afterwards to wit on the 21st day of September 1860 it being one of the days of the September Term AD 1860 of the Stephenson County Circuit Court, the following entry appears of record to wit:

William Ironi

p

}

Attachment

Romundo A Fuller & Andrew de Groot

latey doing business as Fuller & de Groot

Now on this day came on to be heard the defendants motion to set aside the assessment of the damages in this cause and also the motion in arrest of judgment, and after arguments of counsel, the court being advised on the premises, the motions are summarily overruled, and the defendants except

And afterwards to wit on the 11th day of January 1861 it being one of the days of the December Term 1860

of the Stephens County Circuit Court the following entry appears of record to wit:

William Levi

vs

Hernando A Fuller & Andrew De Gruff } Attachments
lately doing business as Fuller & De Gruff }

Now on this day comes the said plaintiff by his attorney and enters his motion for judgment on the verdict of the jury heretofore found. It is thereupon considered and ordered that said Plaintiff have and recover of said defendants the said sum of Four Thousand three hundred and twenty five dollars and fourteen cents his damages, as by the jury heretofore assessed, together with his costs by him about his suit in this behalf expended, and that the property attached be sold to satisfy the same, and that he have special execution for the same, And the said defendant by Turner & Ingalls their attorneys except to the overruling of the motion in arrest of judgment.

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

William Levi

} Attachments

Hernando A Fuller et al } Now on this day comes
said defendants by their attorney and file Bill of Exceptions to the Court

In the Circuit Court of Stephenson County
 Illinois Of the September Term AD 1860
 Hernando A. Guller
 Plaintiff
 vs
 William Brown
 Defendant

Be it remembered that on the
 ninth day of December AD 1859. it being one of
 the days of the December Term AD 1859 of said
 Stephenson County Circuit Court, the said de-
 fendant, filed their motion in said court to
 quash the writ in this cause, for the reason that
 said writ was said & 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 said out
 or issued out of said court directed to Stephenson
 County. And afterwards, 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 plaintiff filed his reply
 motion in said court for an order to amend the
 writ in said cause, so as to make it read directed
 to the Sheriffs of Stephenson and Livingston 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
 came on to be heard by the court the said motions,

30 And thereupon the Court allowed said plaintiffs cross motion to amend said writ which was accordingly amended & afterwards overruled the said defendants motion to quash said writ. To which ruling of the Court in overruling said defendants motion to quash said writ and in 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 Stephenson & were inserted before the word "Livingston" and the word respectively inserted before the word "Greeting" and the letter & added to the word "Sheriff" and "County" in the first of the writ making it read "The People of the State of Illinois to the Sheriff of respectively of Stephenson & of Livingston County respectively Greeting: &c" The word respectively was inserted between the words "you", and "that" and between the words "you" and "attach" making it read "We therefore command you respectively that you respectively attach so much of the estate" &c The word respective was inserted between the words "you" and "County" and the letter & added to the word "County" making the writ read "to be served in your respective County &c" The word respectively

was inserted between the words "also" and "summen"
 making the writ read "and that you also
respectively summen're The word respectively
 was also inserted between the words "shall"
 and "make" also between the words "you" and
 "have" also between the words "you" and "then"
 making the writ read "When and when you
 shall respectively make known to the said
 Court how you respectively have executed this
 Writ. And have you respectively then and
 then this Writ've And afterwards on the 25th
 day of January A.D. 1860 it being one of the days
 of the December 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 has been issued to the County of Stephenson
 and that said Writ was irregular and void.
 Which said motion came on 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 overruled
 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 did then and there except,

The original Writ in this cause was issued
 out of said Stephenson County Circuit Court
 on the tenth day of August A.D. 1859 & directed

32 to the Sheriff of Livingston County and return-
able on the first Monday of September
AD 1859 and by the Sheriff of Livingston
County returned into said Court executed by
levying on Real Estate of Defendant Fuller
and without service on said defendants
they not being found in this County, on the
eleventh day of August AD 1859.

After the writ was amended as aforesaid the
Sheriff of Stephenson County without the sanction
of the Court wrote on it the following return
to wit: "no property found" and without service
on the defendants, March 24th AD 1860, and
no other writ had then issued to Stephenson
County. And afterwards to wit, on the
sixteenth day of April AD 1860 it being one
of the days of the April Term AD 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 motion was on the said day granted
by the Court, and an alias writ issued out of
said Court on the 13th day of June AD 1860
directed to the Sheriff of Stephenson County re-
turnable 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 this county, And no other writ or writs issued on said cause.

And afterwards to wit on the eighteenth day of September A.D. 1860, it being one of the days of the September Term A.D. 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 Stephens 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 13th day of June A.D. 1860, And thereupon the Court overruled the said defendants motion to quash the said alias writ, to which ruling of the Court in overruling the said defendants motion the said defendants by their counsel then & there excepted. And afterwards to wit on the nineteenth day of September A.D. 1860 it being one of the days of the September Term A.D. 1860 of said Court, a jury was called &c, and duly sworn to assess the plaintiffs damages in said cause, and thereupon assessed the said damages at the sum of Four thousand three hundred twenty four dollars and fifteen cents, And afterwards to wit on the 20th day of September A.D. 1860, it being yet of the

34 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 Stepterson County at the time this writ 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 apparent on the record.

And afterwards on the twenty first day of September AD 1860 it being one of the days of the September Term AD 1860 of said court, the said court overruled the motion of said defendants in arrest of judgment in said cause; and afterwards to wit on the eleventh day of January AD 1861 it being one of the days of the December Term AD 1860 of said court, said court rendered judgment in favor of said Plaintiff against said defendants for the said sum of Four thousand three hundred & twenty four dollars and fourteen cents, and costs of suit and awarded a special execution to sell the 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 & there

except and pray that this their Bill of
 Exceptions may be signed and sealed
 by the Court which is done,

Benj. R. Sheldon


Filed Jan 14, 1861.

W. Sheffer Clerk

per W. Chuteau Rep

And afterwards, to wit: On the nineteenth day
 of March A.D. 1863 the following Precept was
 filed in ~~the papers of~~ said Cause.

Stephenson County Circuit Court

Alexander A. Fuller

vs Andrew DeGraff

vs

William Irvine.

The Clerk will please prepare
 a full and complete transcript of the record in
 the above entitled cause, excepting therefrom
 the following papers from the files, to wit:

- 1 The Declaration in said Cause
- 2 The Executions of said bill issued in said cause.
- 3 Bill of costs in said cause.

Wm C Ingalls
 Atty for Defts

State of Illinois
Stephenson County J.S.

J. 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} happens on file in said above entitled Cause
as appears from the Records and files in
my office. Except the Declaration, Execution
and fee bill and Bill of costs in said Cause.
In Testimony whereof I have hereunto
set my hand and affixed the seal of
said Court at Freeport in said County
this 19th day of March A.D. 1863.

J. J. Shaffer. Clerk
per E. A. Hodges. dep



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

Hernando A. Fuller & Andrew DeGraff
Plaintiffs in Error

⁴
William Irvin
Defendant in Error

And now come the said
Hernando A. Fuller and Andrew DeGraff by
Jes^d C Ingalls, their attorney, and say that
in the record and proceedings aforesaid, there
is error, in this, to wit

- 1 The Court erred in overruling the motions of
the defendants in the Court below, & each of them
to quash the Writ
- 2 The Court erred in overruling the motion of
said defendants to arrest the judgment
- 3 The Court erred in rendering the judgment
aforesaid, & 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

And the said Hernando A.
Fuller and Andrew DeGraff pray that the
judgment aforesaid, for the errors aforesaid, may be reversed &
Jes^d C Ingalls
Att^y for Pl^{ts} in Error

80-20

Fuller Et al

• ^{vs} Irvin

Record

Filed Apr. 14, 1863

L. C.eland

CLK.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, APRIL TERM, 1863.

HERNANDO A. FULLER and
ANDREW DEGRAFF,

Plaintiffs in Error,

vs.

WILLIAM IRVIN,

Defendant in Error.

ERROR TO STEPHENSON.

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

1 The affidavit and bond were filed in the Stephenson Circuit Court, August
4 10th, 1859. Also a precipe, directing the Clerk to issue a writ of attachment
5 to *Livingston* County, and a writ was accordingly issued, returnable on the
(31) first Monday of September, 1859, directed to the Sheriff of Livingston County,
to execute.

7 The writ was returned by the Sheriff of Livingston County levied on real
estate of Hernando A. Fuller, one of the defendants in the attachment suit,
9 and without personal service, August 11th, 1859.

11 Proof of publication of notice to defendants was made and filed Dec. 7th.

13 Dec. 9th, Counsel for the defendants below, appearing for that purpose,
moved to quash the writ, for the reason that said writ was sued out of the
(29) Stephenson Circuit Court, directed to Livingston County, and that no writ
had been issued to Stephenson County. The plaintiff below then entered a
15 cross motion for an order to the Clerk to amend the writ so as to make it
directed to the Sheriff's of Stephenson and Livingston Counties respectively.

15 Jan. 24th, 1860. The Court granted the motion to amend, and overruled
(30) the motion to quash the writ, which was excepted to.

The writ of attachment was then amended by the Clerk so as to make it,
(31) directed to the Sheriffs of *Stephenson* and Livingston Counties *respectively*
(32) and the Sheriff of Stephenson County wrote a return on the same writ, no
property found and no service on the defendants—March 24th, 1860.

16 Counsel for the defendants appearing for that purpose, moved the Court to
quash the amended writ, because no writ had issued to Stephenson County,
and because the writ was irregular and void.

17 April 16th. The Court overruled the motion to quash the amended writ.
18 At the same time, on motion of Counsel for the plaintiff the Court ordered
an "Alias" writ of attachment to issue in said cause directed to the Sheriff
of Stephenson County to execute.

A writ was accordingly so issued, in the form of an Alias writ, dated June
19 13th, 1860, returnable on the first Monday of September, and was returned by
the Sheriff of Stephenson County, June 27th, 1860, no property found, and
20 without service on the defendants, they not being found in his county.

(33) No other writ or writs issued in said cause.

21 Sept. 3d. Plaintiff again filed proof of publication of notice to de-
fendants.

- 23 Sept. 4th. Default of defendants taken, (they not having appeared or pleaded.)
- (33) Sept. 18th. Counsel for defendants appearing for that purpose, moved to quash the Alias writ for the same reasons given in support of the former motions to quash—which motion was overruled by the Court and excepted to.
- 24 Sept. 19th. A jury was empanelled to assess the plaintiff's damages. The jury assessed said damages at \$4,324 14.
- 25 Sept. 20. Counsel for defendants filed motion to set aside the assessment for the reason that the assessment was greater than the damages proved. Also to arrest the judgment, because no writ issued to the County of Stephenson when the suit was commenced, and because the writs and each of them were void and should have been quashed.
- 27 Sept. 21st. The Court overruled the motions to set aside the assessment and in arrest of judgment, which ruling was excepted to.
- 28 Jan. 11, 1861. The Court rendered judgment for \$4,324 14, and costs, and ordered special execution to sell the property attached to satisfy the same.

ERRORS ASSIGNED ON THE RECORD.

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 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.

80-20

Fuller et al

ⁿ
Irvin

Abstract

Filed April 22-1863

Lo Lorland

Clerk

SUPREME COURT.

THIRD GRAND DIVISION, APRIL TERM, 1863.

HERNANDO A. FULLER et. al.,
Plaintiffs in Error,
vs.
WILLIAM IRWIN,
Defendant in Error.

ERROR TO STEPHENSON.

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.

Fuller et al

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Irvin

Brief

In Plaintiffs in Error

Filed April 14, 1863

L. Leland CM

SUPREME COURT.

THIRD GRAND DIVISION, APRIL TERM, 1863.

HERNANDO A. FULLER et. al., Plaintiffs in Error,	}	ERROR TO STEPHENSON.
vs.		
WILLIAM IRWIN, Defendant in Error.		

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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.

Fuller et al

vs

Irvin

Brief
for Plaintiffs in Error

Filed April 14, 1863
S. Silance Clerk

SUPREME COURT.

THIRD GRAND DIVISION, APRIL TERM, 1863.

HERNANDO A. FULLER et. al., Plaintiffs in Error,	}	ERROR TO STEPHENSON.
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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.

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Hinman v. Rushmore, 27 Ill. 509.

F. C. INGALLS,
For Plaintiffs in Error.

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Fuller et al

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Irvine

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Brief
for Plaintiff in Error

Filed Apr. 14, 1863
L. S. and
Ck.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, APRIL TERM, 1863.

HERNANDO A. FULLER and
ANDREW DEGRAFF,

Plaintiffs in Error,

vs.

WILLIAM IRVIN,

Defendant in Error.

ERROR TO STEPHENSON.

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

1 The affidavit and bond were filed in the Stephenson Circuit Court, August
4 10th, 1859. Also a precipe, directing the Clerk to issue a writ of attachment
5 to Livingston County, and a writ was accordingly issued, returnable on the
(31) first Monday of September, 1859, directed to the Sheriff of Livingston County,
to execute.

7 The writ was returned by the Sheriff of Livingston County levied on real
estate of Hernando A. Fuller, one of the defendants in the attachment suit,
9 and without personal service, August 11th, 1859.

11 Proof of publication of notice to defendants was made and filed Dec. 7th.

13 Dec. 9th, Counsel for the defendants below, appearing for that purpose,
moved to quash the writ, for the reason that said writ was sued out of the
(29) Stephenson Circuit Court, directed to Livingston County, and that no writ
had been issued to Stephenson County. The plaintiff below then entered a
15 cross motion for an order to the Clerk to amend the writ so as to make it
directed to the Sheriffs of Stephenson and Livingston Counties respectively.

15 Jan. 24th, 1860. The Court granted the motion to amend, and overruled
(30) the motion to quash the writ, which was excepted to.

The writ of attachment was then amended by the Clerk so as to make it,
(31) directed to the Sheriffs of Stephenson and Livingston Counties respectively
(32) and the Sheriff of Stephenson County wrote a return on the same writ, no
property found and no service on the defendants—March 24th, 1860.

16 Counsel for the defendants appearing for that purpose, moved the Court to
quash the amended writ, because no writ had issued to Stephenson County,
and because the writ was irregular and void.

17 April 16th. The Court overruled the motion to quash the amended writ.
18 At the same time, on motion of Counsel for the plaintiff the Court ordered
an "Alias" writ of attachment to issue in said cause directed to the Sheriff
of Stephenson County to execute.

A writ was accordingly so issued, in the form of an Alias writ, dated June
19 13th, 1860, returnable on the first Monday of September, and was returned by
the Sheriff of Stephenson County, June 27th, 1860, no property found, and
20 without service on the defendants, they not being found in his county.

(33) No other writ or writs issued in said cause.

21 Sept. 3d. Plaintiff again filed proof of publication of notice to de-
fendants.

- 23 Sept. 4th. Default of defendants taken, (they not having appeared or pleaded.)
- (33) Sept. 18th. Counsel for defendants appearing for that purpose, moved to quash the Alias writ for the same reasons given in support of the former motions to quash—which motion was overruled by the Court and excepted to.
- 24 Sept. 19th. A jury was empannelled to assess the plaintiff's damages. The jury assessed said damages at \$4,324 14.
- 25 Sept. 20. Counsel for defendants filed motion to set aside the assessment for the reason that the assessment was greater than the damages proved. Also to arrest the judgment, because no writ issued to the County of Stephenson when the suit was commenced, and because the writs and each of them were void and should have been quashed.
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- 28 Jan. 11, 1861. The Court rendered judgment for \$4,324 14, and costs, and ordered special execution to sell the property attached to satisfy the same.

ERRORS ASSIGNED ON THE RECORD.

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 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.

Fuller at at

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Irwin

Abstract

Filed April 22-1863

L. Leland

Clerk

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, APRIL TERM, 1863.

HERNANDO A. FULLER and
ANDREW DEGRAFF,

Plaintiffs in Error,

vs.

WILLIAM IRVIN,

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F. C. INGALLS,
For Plaintiffs in Error.

Fuller & al

Irwin

Abstract

Filed April 22-1863

G. Leland

Clerk