

No. 14722

Supreme Court of Illinois

Munson

VS.

Harroun

14722

STATE OF ILLINOIS,
SUPREME COURT,
THIRD GRAND DIVISION.

No. 57 11

J. W. Middleton & Co., Stationers, 196 Lake St.

Myerson

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SUPREME COURT,

STATE OF ILLINOIS.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

PARNELL MUNSON,
Plaintiff in Error.

VS
ALVIN HARROUN,
Defendant in Error.

} ERROR TO IROQUOIS.

Filed Apr 21 1864
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ATTORNEYS FOR DEFENDANT IN ERROR.

ARGUMENT AND AUTHORITIES FOR DEFENDANT IN ERROR.

MIDDLEPORT, ILLS.

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State of Illinois, Iroquois County.

SUPREME COURT, STATE OF ILLINOIS.

Third Grand Division.

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Argument and Authorities for Defendant in Error.

There can be but one question, except as to the pleas, raised in this case, in this court, if any question can now be raised.

The history of the case being this: That in the month of July, 1861, one Alvin Harroun, the defendant in error, was doing a mercantile business in the town of Middleport, in Iroquois County, and was then in possession of a store and stock of goods in said town

Courts, we find, *Sec. 8, of Art. 5, of the New Constitution of Ills.*, as follows:

"There shall be two or more terms of the Circuit Court held annually in each county of this State, at such times as shall be provided by law, *and said courts shall have jurisdiction in all cases at law and equity, and in all cases of appeals from all inferior courts.*"

Sec. 29, Chap. 29 of Revised Statutes of 1845, we find these words: "And the said Judges respectively, in their respective circuits, shall have jurisdiction over all matters and suits at common law and in chancery, arising in each of the counties in their respective circuits where the debt or demand shall exceed twenty dollars."

Cook's Statutes, page 625, Sec. 29.

The action of Replevin is a common law action, and is specifically one named in the Constitution and laws of this State, which gives the Circuit Court jurisdiction.

Morris on Replevin, page 17, 18 and 19.

Burrell's Law Dic., page 884.

The Constitution of the State of Illinois then conferring such jurisdiction upon the State courts, such courts will continue to retain jurisdiction unless it is in violation of the Constitution of the United States.

Article 10 of Amendments to the Constitution of the United States, reads in these words:

"The powers not delegated to the United States by the Constitution, nor prohibited by it to the States,

ror is, that if any action could be maintained against him, the defendant in error had not the choice of forum, as the jurisdiction of the courts of the United States in a case of this character is exclusive. If this proposition be true, it is quite unnecessary for the plaintiff in error to come here to ask this court to reverse the judgment, for it is utterly void.

1 *Comstock R.*, page 543.

"This is undoubtedly a question of grave importance; for, if the plaintiff in error be right, the State courts have been wrong ever since the adoption of the constitution of the United States; as the cases are almost without number, in which such courts in the exercise of their ordinary, original and rightful jurisdiction have incidentally taken cognizance of cases arising under the constitution, the laws and treaties of the United States. In our own courts, officers of the Government of the United States have been impleaded in actions of assumpsit, debt, trespass, replevin, &c., in which the defense set up was that they were acting officially under the laws of the Union.

1 *Kent Com.*, 395.

Ripley vs. Gelston, 9 *Johnson R.*, 201.

In the matter of Stacy, 10 *Johnson*, 328.

Hoyt vs. Gelston & Schenck, 13 *Johnson*, 141.

Wilson vs. McKenzie, 7 *Hill*, 95.

U. S. vs. Dodge, 14 *Johnson*, 95.

Federalist, No. 82.

1 *Comstock Court of Appeals R.*, 537.

In *Wilson vs. McKenzie*, 7 *Hill*, 95, Nelson, Ch. J., held "that trespass may be maintained in State courts against an officer of the navy for illegally assaulting

and imprisoning one of his subordinates, though the act was done upon the high seas, *and under color of naval discipline.*"

Says Judge Wright in the case of *Teall vs. Felton*, 1 Comstock, 544: "The first section of the third article of the Constitution of the United States, provides for the organization of a Supreme Court and such inferior courts as Congress may from time to time ordain and establish." This provision simply denotes the organs of National Judiciary. Were its construction extended further, "it would," (as has been remarked by one of the eminent framers of the Constitution,) "amount to an alienation of State power by implication."—*Federalist*, No. 82. The second section provides that "the judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States and treaties made, or which shall be made under their authority, to all cases affecting ambassadors, other public ministers and consuls; to all cases of admiralty and maritime jurisdiction; to controversies to which the United States shall be a party; to controversies between two or more States, between a State and citizens of another State, between citizens of different States, between citizens of the same State, claiming lands under grants of different States, and between a State or citizens thereof and foreign States, citizens or subjects."

This is a mere grant of jurisdiction to the federal courts, and limits the extent of their powers, but without words of exclusion, or any attempt to oust the State courts of concurrent jurisdiction, in any of the specified cases in which jurisdiction existed prior to the adoption of the constitution.

The apparent object was not to curtail the powers of the State courts, but to define the limits of those granted to the federal judiciary.

This doctrine of exclusive and concurrent jurisdiction growing out of the provisions of the third article of the constitution of the United States, was fully examined in the court for the correction of errors in the case of *Delafield vs. State of Illinois*, 2 Hill, 159, and that court, with great unanimity, arrived at the conclusion that the constitution had not by its own force divested the State courts of any of their former jurisdiction, and that a mere grant of jurisdiction to a particular court without words of exclusion as to other courts previously possessing the like powers, will only have the effect of constituting the former a court of concurrent jurisdiction with the latter.

See opinion of *Bronson Judge*, in case of
Delafield vs. State of Illinois,

2 Hills, N. Y. Reports, 159, 164,
Federalist, No. 82.

Judiciary Act of 1789,

Opinion of Wright, Judge, in the case of Teall vs. Felton, 1 Comstock Court of Appeal Reports, (N. Y.) 543.

The action of replevin is one coeval with the common law to enforce a right to property, alleged to have been wrongfully taken and converted by the defendant. This remedy for a tortious conversion has always been complete in the State courts. It does not follow that, because the defendant below may have been acting under any law of Congress, or by virtue of any process issued by any other court or jurisdiction, that he may defend himself in all his illegal doings on the

grounds that exclusive jurisdiction is given to the tribunal from whence the process issued. The plaintiff in this case is not seeking to recover his property under any U. S. law. He simply seeks to recover in an appropriate common law tribunal, competent to afford a remedy, and in a form of action, more ancient than the federal constitution and laws, the specific property, so wrongfully taken and detained by the defendant below. If the defendant could have maintained by the constitution and laws of the U. S. that there was no illegal taking and detaining, he could have made that a defence upon the merits. But a jury has found him guilty of such wrongful taking and detaining, and that is not to be questioned here in the form in which this case comes into this court. It is an incorrect conclusion that, because a law of Congress prescribes the duties of an officer of the federal government and in a proper case he may defend his acts, for such reason the State courts are ousted of jurisdiction.

But we are told that the goods and chattels replevied in this case were in the custody of the law, and were not repleviable. The goods in question, being the property of Alvin Harroun, the defendant in error, and not the property of John F. Wright, against whose property the execution issued, never were in the custody of the law. The execution in the hands of the plaintiff in error, directed and commanded him to satisfy the same out of the goods and chattels and property of the defendant named, he had no legal right to trespass upon the rights of Alvin Harroun, and when he did so he could claim no farther protection than any other citizen of this State. The statute of the State of Illinois granted to the plaintiff in the court below, cer-

tain remedies: trover, trespass, the trial of the right of property or replevin. He chose the latter. Our State court has jurisdiction in all such like common law actions. Every State in the Union sustains her jurisdiction in such cases. And proceedings in replevin have been commenced against United States Marshals before this, in this State, and have been entertained by this court. See 1 Gilman R., 370, though the question was not directly raised.

The plaintiff and defendant were, as we have said, and still are citizens of the same State, over which the circuit court of the United States has not jurisdiction. Parties suing in the U. S. courts are bound to appear upon the record as citizens of different States, otherwise such courts have not jurisdiction. Decisions to this effect may be traced from a period coeval almost with the passage of the judicial act, down to this date, ranging through all the volumes of the U. S. Supreme Court Reports, and ruling, it is believed, without an exception, that wherever jurisdiction is to be claimed, from citizenship or alienage of parties, such citizenship or alienage of parties must be expressly set forth.

Bingham vs. Cabot et. al. 3 Dall., 382.

Turner vs. Eurilla, 4 Dall., 7.

Turner, &c., vs. Bank of N. America, 4 Dall., 9.

Massman vs. Higginson 4 Dall., 14.

In the last above cited case, the Supreme Court use the following language: "Neither the Constitution nor the act of Congress regards on this point the subject of the suit, but the parties. A description of the parties is therefore indispensable to the exercise of jurisdiction."

Wood vs. Wagoner, 2 *Cranch*, 9.

Winchester vs. Jackson, 3 *Cranch*, 514.

The circuit court of the U. S. is a court of limited jurisdiction.

Kemp's Lessee vs. Kennedy, 5 *Cranch*, 185.

Montalet vs. Murray, 4 *Cranch*, 46.

McCormick vs. Sullivan, 10 *Wheat.*, 199.

Osborn vs. The Bank of the U. S., 9 *Wheat.*, 856.

Breithaupt vs. Bank of Georgia, 1 *Peters R.*, 328.

Brown vs. Keen, 8 *Peters R.*, 112.

1 *Kent Com.*, 385, 386-388-390.

Houston vs. Moore, 5 *Wheat.*, 16.

Suppose then that the plaintiff in this case is compelled to bring his action in the circuit court from whence the writ of execution issued, can he allege truthfully upon the record that the plaintiff and defendant are citizens of different States? Certainly not, and if he did so charge the fact to be, the proof by plea, or otherwise, would at once oust the U. S. circuit court of its pretended jurisdiction, and leave the plaintiff remediless, unless a State court has jurisdiction. This proceeding is not against Parnell Munson, as Marshal, but against him as a private citizen, to recover of him property wrongfully and tortiously taken by him, belonging to the plaintiff below.

The defendant Munson stands in the same position as any private citizen of this State, and is alike liable for his trespasses and tortious acts. It is not to be presumed that the plaintiff had knowledge that the defendant was deputy Marshal, nor was he bound to take notice of that fact. The writ, in the hands of the defendant below, commanded him to make the money therein

named out of the goods and chattels of one John F. Wright, and when he took the goods and chattels of Alvin Harroun, the plaintiff, he was not following the commands or requirements of his writ, and cannot be protected by it, and acted at his peril.

Chancellor Kent, in his Commentaries, at page 410, vol. 1, (sixth ed.), uses the following explicit language: "But if there be no jurisdiction in the instance in which it is asserted, *as if a Marshal of the United States, under an execution in favor of the United States against A, should seize the person or property of B, then the State courts have jurisdiction to protect the person and the property so illegally invaded*, and it is to be observed that the jurisdiction of the State courts in Rhode Island was admitted by the Supreme Court of the United States, in *Slocum vs. Mayberry*, upon that very ground," citing (2 *Wheaton's U. S. Rep'ts* 1.)

The case of *Slocum vs. Mayberry*, 2 Wheat. U. S. Repts., page 1, is a very strong case sustaining the jurisdiction of the State courts, and, as we apprehend, is in point. Chief Justice Marshall, in delivering the opinion of the court, says, after construing the judiciary act: "This being the true construction of the act of Congress, the owner has the same right to his cargo that he has to any other property, and may exercise over it every act of ownership not prohibited by law. He may consequently demand it from the officer in whose possession it is, that officer having no legal right to withhold it from him; and if it be withheld, he has a consequent right to appeal to the laws of his country for relief. To what court can this appeal be made? The common law courts of the United States have no

jurisdiction in the case. They can afford him no relief. The party might, indeed, institute a suit for redress in the district court, acting as an admiralty and revenue court, and such court might award restitution of the property unlawfully detained. But the act of Congress, neither expressly nor by implication, forbids the State courts to take cognizance of suits instituted for property in possession of an officer of the United States, not detained under some law of the United States, consequently their jurisdiction remains."

See *Bowen vs. Ogden*, 6 Halsted R. 370. +

Dunn vs. Vail, 7 Martin La. R. 416. +

+ We call Special
attendants of the Court
to the court here cited
the same being
directly in front

If the U. S. courts have jurisdiction, the State courts have concurrent jurisdiction; 1 *Kent* 332. It might well be asked in what court (if the State court has not jurisdiction,) should the plaintiff sue. The Supreme Court of the U. S. have in many instances decided that "the common law courts of the U. S. have no jurisdiction in the case." This is certainly a common law action, and is as ancient as any part of the common law. Says Morris in his work on Replevin: "The action of replevin is among the oldest known to the law. Glanvil speaks of it in his time," &c., *Morris' Replevin*, 19; the plaintiff then certainly could not sue in the common law court in which the judgment was rendered, unless the parties were citizens of different States at the time such action was commenced, which was not the case at the time this suit was instituted.

But we are told that the goods so taken and detained "were in the custody of the law, and under the authority and jurisdiction of the circuit court in and for the Northern district, and were not repleviable by the

plaintiff." We may ask, How came the same in the custody of the the law? Was there any judgment against Alvin Harroun? Was there any execution or *fiери facias* in the hands of the said Munson against the goods and effects of the plaintiff in the court below? We find none. On the contrary, defendant below plead and shows that the *fiери facias* was directed against the goods and effects of one John F. Wright. The chattels then replevied were not in the custody of the law, and were ~~not~~ repleviable. This idea that the goods were in the custody of the law might apply to defendants in execution; but it evidently does not apply to third persons. The Marshal had no jurisdiction over them, nor had the U. S. circuit court, the jurisdiction only extended to the property of John F. Wright, the defendant in the *fi fa* named.

5 *Peters' Reports*, 90, 91.

14 *Johnson Reports*, 84.

Dunham vs. Wykoff, 3 *Wind. R.*, 280.

Clark vs. Skinner, 20 *John. R.*, 467.

The jurisdiction of the circuit courts of the State of Illinois is derived from and fixed by the constitution of the State, as found in Sec. 8, Article 5: "The broad language used in the new constitution in conferring jurisdiction upon the circuit courts, would seem to have done away with the restriction which was imposed upon the former courts, and it may be regarded that the circuit courts as now organized have original jurisdiction in all cases at common law and in equity, without regard to the debt or demand which is sought to be recovered."

Freeman's Practice, P. 14, Sec. 30.

We find no limitation as to jurisdiction of the cir-

cuit courts in any part of the constitution of this State.

The sweeping clause of the constitution, "There shall be two or more terms of the circuit court held annually in each county of this State, at such times as shall be provided by law; *and said courts shall have jurisdiction in all cases at law and equity, and in all cases of appeals from all inferior courts,*" is language that does not admit of limitation or restriction, and means just what it reads. Hence, circuit courts are not inferior courts in the common law sense of the term. The circuit courts have always been pre-eminently the Superior courts of this State, and are the only Superior courts that possess original and unlimited jurisdiction. They exercise within their respective counties all the powers and jurisdiction of the courts of the King's Bench and Common Pleas in England.

1 Freeman's Practice, P. 14, Sec. 31.

Beaubien vs. Brinkerhoff, 2 Scam. R., 272.

Brewster vs. Scarborough, 2 Scam. R., 281.

Wells vs. Mason, 4 Scam R., 88.

Kennedy vs. Greer, 13 Ills. R., 432.

Deblee vs. Davidson, 25 Ills. R., 486.

The jurisdiction of superior courts can be taken away only by express negative words of a statute, or by irresistible implication.

Murfree vs. Leeper, 1 Overt., 1.

Burgenhofen vs. Martin, 3 Yeates, 479.

Overseers, &c., vs. Smith, 2 Sergt. & Rawle, 363.

Commonwealth vs. White, 8 Pickering, 453.

Commonwealth vs. McClosky, 2 Rawle, 369.

Can there anything be found in the Constitution of the United States, or by any express act of Congress, whereby it can be made to appear that it was

the intention, "by express negative words of a statute" or "by irresistible implication," to deprive the State courts of the State of Illinois the right under her constitution to take jurisdiction over a case like this? We think not. It is asking this court to declare the Constitution of the State unconstitutional, inasmuch as the power of the Circuit Court of this State is granted by the Constitution.

Again we say, even granting that the U. S. Circuit Court and the State Circuit Court have concurrent jurisdiction, (which we do not admit, holding that the State court has exclusive jurisdiction,) the well established rule of law follows that, "Where different courts have concurrent jurisdiction, that, before which proceedings are first instituted, and whose jurisdiction first attaches, has authority paramount to the others, and cannot be ousted of its jurisdiction, by proceedings in the other courts."

Stearns vs. Stearns, 16 Mass. 171.

Bemis vs. Stearns, 16 Mass. 203.

State vs. Yarbrough, 1 Hawkes 78.

Thompson vs. Hill, 3 Yerger 167.

Smith vs. McIver, 9 Wheat. 532.

The Robert Fulton, Paine 621.

Eaton vs. Patterson, 2 Stew & Porter 9.

Then if it is held that the Circuit Court of the U. S. and the State court have concurrent jurisdiction, it will be seen that proceedings were first instituted in the State court, whose jurisdiction first attaches, and has authority paramount to all others.

There is, as we apprehend, another section of the Constitution of this State that has a bearing on this

case, which declares that "Every person within this State ought to find a certain remedy in the laws for all injuries or wrongs which he may receive in his person, *property* or character, he ought to obtain right and justice freely, and without being obliged to purchase it, completely and without denial, promptly and without delay, conformably to the laws." *Article 13, Sec. 12, New Constitution.*

The same declaration was made a part of the constitution of 1818, (Art. 8, Sec. 12, Constitution of 1818,) and cited by Justice Smith in delivering the opinion of the court in *Brewster vs. Scarborough*, 2 *Scam.*, 282.

Again we find, Section 1, Art. 13, of the New Constitution, reads as follows: That all men are born equally free and independent, and have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, and of *acquiring, possessing and protecting property*, and reputation, and of pursuing their own happiness. The State courts afford ample remedies for all wrongs and injuries of this nature to the citizens' property.

Measured by the principles of the case of *Delafield, vs. State of Illinois*, (2 Hill's Reports, 159, decided in the Court of Errors, in the State of New York, by one of the most learned and dignified courts of the nation, composed, as it was, of Chief Justice Nelson, Bronson & Cowen, aided by Reuben H. Walworth, then chancellor of the State and the State Senate, to which case, and the opinion of the court delivered by Bronson, J., we desire to call the particular attention of this court,) we insist that this judgment ought to be affirmed.

The case last cited is perhaps not in all particulars in point, but as the great principles so fully discussed therein, are involved in this case, we apprehend it will have a strong bearing herein.

Again, we find in Section 8 of Art. 13, of the State constitution, these words: "That no freeman shall be imprisoned or *disseized* of his freehold, liberties or privileges, or outlawed or exiled, or in any manner deprived of his life, liberty or *property*, but by the judgment of his peers or the law of the land."

The judgment of his peers, a jury, have in this case already told him (the defendant in error,) that he was not to be thus deprived of his property, by finding the plaintiff in error guilty of the wrongful taking and detaining, as charged against him. The question has been tested by the law of the land, by a court and jury of competent jurisdiction.

In pursuance of the authority granted by the old constitution of this State, the Legislature in 1845, enacted a law and laid down the rules by which the action of replevin was to be governed.

Cook's Stat., page 226.

That law still remaining in full force and effect at the time of the adoption of the constitution of 1848. By Section 1, of Schedule, it was ordained, "That all laws in force at the adoption of this constitution, not inconsistent therewith, and all rights, actions, prosecutions, claims and contracts of this State, individuals or bodies corporate, shall continue and be as valid as if this constitution had not been adopted."

Hence it remains and continues the law of the

State, whereby the circuit courts of this State derive their jurisdiction. First, from the constitution itself; and, second, from legislative enactment. The broad language used in both admits of no exception, and remains unlimited.

Reasoning from analogy, we find that State courts have continued to take jurisdiction over cases involving the same questions presented in this case. As an example of this, take proceedings under the writ of *habeas corpus*. The privileges of the writ of *habeas corpus* are provided for in the Constitution of the U. S., and the same constitution provides that "The judicial power of the United States shall extend to all cases in law and equity arising under this constitution, the laws of the United States, and treaties made, or which shall be made under their authority." This provision has never been held to prohibit the exercise of judicial power by the State courts in such cases.

Congress not having undertaken (if indeed it has the power,) to make *original* jurisdiction in such cases exclusive in the federal courts, the State courts have hitherto exercised it concurrently with the federal courts. It is not by the constitution or by the act of Congress declared to be exclusive in the federal courts. Accordingly the State tribunals exercising a judicial power which they possess independent of national authority, and of which they have not been divested by the constitution of, or any law of the United States, have always exercised in these cases concurrent jurisdiction with the federal courts.

Whether the judges of a State court have power to issue a writ of *habeas corpus* in cases of commit-

ments, or detainer, under the authority of the United States, and if so, under what circumstances? are questions which have been determined in many of the State courts.

"It may be considered settled that State courts may grant the writ in all cases of illegal confinement under the authority of the United States."

Hurd on Habeas Corpus, 166.

The Chief Justice of Pennsylvania, (Tilghman), in the case *ex parte* Sergeant, 8 Hall's Law Jour. 206, and reported under the head of *Olmsted's Case*, *Brightley Rep.* 9, examined the case thoroughly, and found that the State court had jurisdiction, in case of a writ of attachment issued out of the Circuit Court of the United States.

Even in the only case where this jurisdiction is denied, to-wit: case of Ferguson, Kent, C. J., uses the following language that has a strong bearing in this case: "The civil remedy of the party by private suit in a State court is a distinct question not before us; and in cases of a private suit, *the State courts have, in most cases, by the act of Congress, concurrent jurisdiction.*"

Hurd on Habeas Corpus, 179-181.

In the matter of Carlton, 7 Cowen, 471.

The doctrine that a State court had full jurisdiction is fully re-examined, by the Supreme Court of Pennsylvania, in the Lockington's case, *Brightley Rep.* 269, *Hurd on Habeas Corpus*, 183, 184, 185, and the State jurisdiction sustained.

Again in *The Commonwealth Ex rel., Webster vs.*

Fox, 7 *Barr* 336, the same doctrine was held. Also, in *Commonwealth vs. Murray*, 4 *Binn*, 487; *Case of J. H. Pleasants*, 11 *American Jurist* 257; *Commonwealth vs. Harrison*, 11 *Mass. R.* 63; *Commonwealth vs. Cushing*, 11 *Mass. R.* 67. In the case of *The State vs. Dimick*, 12 *N. Hump.* 197, the Supreme Court of N. H. use the following strong language in regard to State jurisdiction: "If the laws of the United States justify the detention of the applicant, there is nothing illegal. If they do not, it is not a case arising under the laws of the United States, although it may be under color or pretence of authority by virtue of those laws. But a mere pretence of authority under the laws of the United States is no better than any other pretence. It neither confers an exclusive jurisdiction on the courts of the United States nor ousts the ordinary jurisdiction of the courts of this State, nor can it make any difference that the illegal imprisonment, if there be one, is by an officer of the United States army. *The courts of the United States have no exclusive jurisdiction over their officers.*"

Hurd on Habeas Corpus, 197.

We are told that all these decisions apply to Habeas Corpus cases, and to personal rights. All this can be well admitted. This case is much stronger than cases of illegal imprisonment, inasmuch as in this case a third party comes in, who is entirely innocent, and against whom there is no process, writ or warrant, and over whom the officer makes no pretense to have any control, personally, or over his property, while in the other case he has at least a semblance of authority, and perhaps a writ, fair upon its face, commanding him, as such officer, to arrest and take into his custody the iden-

tical individual named in his process. Still the law is that, if from any cause, the restraint is illegal, State courts have competent jurisdiction to interfere, and discharge the prisoner, though such officer should claim that he was a United States Marshal, and that the prisoner was in the custody of the law, and under the jurisdiction of the court from whence the process issued.

We find in our constitution as full a guarantee to the protection and enjoyment of property, as we do to the right of liberty, especially is it so in the constitution of this State. The same section that grants the right of personal liberty, grants protection to the possession of property. We are unable to find in any of our reports, either State or National, that the authority of the State court in a case like this has ever before been questioned. We are compelled to reason from analogous cases, or such as involve the same principles that will govern in this case, and in so doing we are led to the conclusion that unless the jurisdiction of the State court is expressly prohibited by the constitution of the U. S. or the laws thereof, it still remains inherent in the State, as provided in our own constitution and laws. As said by the Supreme judicial court of Massachusetts: "*It is too clear to require argument.*"

Suppose this court reverses the judgment of the court below and remands the case, on the ground that a State court has not jurisdiction, the defendant in error would be required to make return of the goods and chattels, or be sued upon his bond, could he, in case he was sued upon his bond, avail himself of the provisions of the statute of this State, allowing him to

plead that the merits of the case have not been tried, and determined in an action of replevin, and also his title to the property.

Cook's Statutes, page 227.

Or suppose the defendant in error should choose to return the goods and chattels replevied, could he then sue in an action of trespass, for the taking and detaining? If he thus sued the plaintiff in error, he would again be met with the plea that he, the defendant therein, was a Marshal of the United States, and the State courts have no jurisdiction over his acts, he could plead his exemption as well to an action of trespass as replevin, as replevin can be sustained where trespass can. Again, we would ask, could he return the goods and commence an original action in the U. S. Circuit Court? If he saw fit to do so, he would be met at the threshold by a plea to the jurisdiction of that court, inasmuch as the plaintiff and defendant are citizens and residents of the same State, which plea would certainly be good and sufficient to at once oust that court of its jurisdiction. And, also, inasmuch as we are told by the Supreme Court of the United States, that such court could afford him no relief: "The common law courts of the United States have no jurisdiction in the case."

Slocum vs. Mayberry, 1 *Wheaton R.*, 1.

Unless we are correct, Chief Justice Marshall was wrong.

To assume that a Deputy Marshal of the Northern Dist. of Illinois can go forth from the city of Chicago to the most distant point in his district, or perhaps outside of it, armed with his writ of *feri facias*

against the goods and chattels of A., not finding goods and property of A., takes into his custody and control the goods of B. or C., and converts the same, and when the true owner claims them, and sues for them in the common law action of replevin, the defendant meets him with the plea that he is a Marshal of the U. S., and exempt from all control or jurisdiction of any and all State courts, and the property is in the custody of the law and not repleviable, is, we think, an assumption that this court nor any other will sustain him in. It would at once grant to such officers a license to wrongfully and tortiously take property of innocent owners not named in their writs, and over which they have no control or jurisdiction.

Even if the court from whence the writ issued have full and complete jurisdiction, can the injured party in such case be compelled to follow such officer hundreds of miles, to obtain redress of grievances, when the common law courts of the State, of unrestricted and unlimited jurisdiction, can, and does, afford ample and sufficient relief? We think not. If that be the law, then what becomes of Section 8, of our Constitution, "that no freeman shall be deprived of his life, liberty, or property, *but by the judgement of his peers or the law of the land.*" Or of Section 12, of the same Constitution, (before given,) "he certainly ought to find a certain remedy in the laws for all injuries or wrongs which he may receive in his person or property, and he ought to obtain justice freely, and completely, without denial."

This is not a case between the same parties that were in the suit, in the United States Court, in which judgment was rendered against one John F. Wright.

Neither Parnell Munson or Alvin Harroun are parties to that suit, as appears by the record thereof, and by the pleas filed in this case. This is an entirely distinct and original proceeding between different parties, and does not go back to, or have any connection with any other proceeding. This suit was first commenced in the Circuit Court of this State, over which such court had original and complete jurisdiction, by the Constitution and laws of the United States and of this State. Let it be exclusive or concurrent, it is immaterial which, the State court first obtained jurisdiction, and will hold it. We see, under the statute and laws, justices of the peace issuing writs of replevin against sheriffs and constables, executing the same, and no pleas are entered that the property is in the custody of the law, and under the jurisdiction of another court, and not repleviable. Justices of the Peace and Circuit Courts have concurrent jurisdiction in such cases, where the amount claimed does not exceed one hundred dollars. The doctrine contended for in this case, by the plaintiff in error, is not sound, and is not sustained by the law or the decisions.

If the evidence in this case was here before this court, it would show conclusively that the plaintiff in error had ample notice of the rights of the defendant in error, long before he took the goods and property and detained the same; that he wantonly, knowingly and tortiously took the property, after being fully informed that he had no jurisdiction, right or control over the same; all of which the jury have found him guilty of.

The judgment of the court below was correct in holding the pleas bad on this point alone, had they

been well pleaded, but it will be seen that the pleas and each of them were defective in more respects than one.

After a full and careful examination of all the authorities bearing upon this question, we have no doubt as to the jurisdiction of the State court; and inasmuch as no question is made, or can be made, as to the merits, or instructions of the court below in the form in which this case comes into this court, we believe it is the duty of this court to affirm the judgment of the circuit court.

II.

The demurrers in this case to the defendant's pleas were properly sustained by the court below. The defendant below attempted to justify the taking, as United States Deputy Marshal, but failed to aver that the writ was in full force, and the money therein claimed, unpaid.

In the language of this court, in *Dayton vs. Fry*, 29 Ill. R.: "It is manifest, that it is only by virtue of an unsatisfied *fi fa*, in full force, the Sheriff could make a valid levy. Had this execution been satisfied, or had the levy been made after return day, the defendant in execution could recover the property, and so could his security on his delivery bond," &c. "It is only by virtue of an execution in full life and unsatisfied, that the Sheriff may levy and hold property of the defendant. When a party justifies what would otherwise be a trespass by legal process, he must not only show that he acted under what purports to be a valid writ, when it was issued, but that it was in full force and conferred the power to perform the act, at the time

he acted. To have shown a justification or an estoppel in this case, the pleas should have averred that the writ was in full force, the money unpaid, and the levy made, &c., in pursuance of its authority. The plea failing to aver that the writ was unsatisfied, and that it was in full force when the levy was made, &c., the plea was defective."

On inspection it will be observed that in not one of the seven pleas filed in the first instance, nor in any of the four amended pleas, did the defendant aver that the *fi fa* was in full force, or unpaid, or unsatisfied. Hence we say that the pleas to which the demurrers were sustained were defective.

It will be observed by an examination of the record, that special demurrers were filed to each plea, and the very question decided in 29th Ill. R., (above cited,) was argued by counsel and passed upon by the court below in sustaining such demurrers, and the defects in that respect specifically pointed out.

It will also be observed that the pleas to the jurisdiction (if they can be called such,) were not properly pleaded, and on motion, would have been stricken from the files, the same point was duly reached by demurrer. They were pleaded by attorney. The rule is, that it must be done in person and not by attorney, because the latter would admit the jurisdiction. *Mineral Point R. R. Co. vs. Keeply*, *Chit. Plead.* 444. *This rule is well settled.*

III.

The pleas are bad, moreover, inasmuch as they do

not show that there is another court by which the matter may be tried, and that another court has jurisdiction. In *Gould's Work on Pleading*, page 236, Sec. 26, we find the following specific rule: "As to the *mode of pleading* to the jurisdiction, there is an essential difference to be observed between a plea to jurisdiction, in a court of *limited* and one of *general* jurisdiction. In a court of the former class, it is sufficient to plead negatively, i. e. to show by proper allegations that the court has not jurisdiction. Whereas, in a *Superior* court it is necessary, both at law and in equity, and as well in criminal as in civil cases, not only to show that the court has *not* jurisdiction; *but also to point out, specifically, some other court which has it.* For if it does not appear that a remedy can be had in some other tribunal, that very fact will, in general, confer jurisdiction upon a superior court, as there would otherwise be, for aught that would appear, a failure of justice."

Rea vs. Hayden, 3 Mass. R., 25.

Lawrence vs. Smith, et. al. 5 Mass. R., 362.

King vs. Johnson, East. R. 598.

Mostyn vs. Farigas, Cowper R., 161.

King vs. Johnson 2 Smith R., 591.

Yelverton R., 13.

4 *Vesey R.*, 202.

2 *Vesey R.*, 457.

2 *Barr R.*, 1047.

Doctrina Placitandi, 234.

Gould's Pleading, 236.

It is not averred, or in any manner shown by any one of the whole number of pleas filed in this case, that the U. S. circuit court or any other court has ju-

jurisdiction over the subject matter, or person of the plaintiff or defendant. Hence the pleas are clearly bad.

IV.

And again, the pleas are bad for duplicity ; they are double and attempt to allege two grounds of defence in one plea, when one of them would be as effectual in law as both.

Gould's Pleading, 419, *Secs.* 1, 2, 3, 4, 5.

V.

The defendant in the court below, by appearing and pleading in bar to the general issue, waived the jurisdiction and by not pleading thereto in person.

22 *Ills. R.* 19, 1 *Chitty Plead.* 444.

VI.

A plea to the jurisdiction of a court of general jurisdiction as the circuit court of the State of Illinois, should expressly aver sufficient to show a want of it. Suppose in this case we should admit that the goods, wares and merchandize replevied were in the custody of a Deputy Marshal of the Northern District of Illinois, still the court would have jurisdiction to try and determine the question whether they were rightfully there or not. Hence the pleas are bad.

Diblee vs. Davidson, 25 *Ills.*, 486.

In that case this court says: "With superior courts of general jurisdiction, the presumption is, that they are in the proper exercise of jurisdiction, until the contrary is shown ; and it is a rule of pleading, that a

plea to the jurisdiction of the court must aver facts, showing the absence of jurisdiction, and must be certain in every particular. If the plea is uncertain in any particular, it will be bad on demurrer, or if the facts averred might be admitted to be true, and the court still, by reasonable intendment have jurisdiction, the plea will be bad. In other words, the defendant must by his plea show that the court had no jurisdiction in any event, and it must appear by averment."

VII.

Replevin lies for the wrongful taking and detaining goods where trespass would.

Clark vs. Skinner, 20 *John. R.*, 465.

Chapman vs. Andrews, 3 *Wend. R.*, 240.

Marshall vs. Davis, 1 *Wand. R.*, 109.

Rogers vs. Arnold, 12 *Wend. R.*, 30.

Steward vs. Wells, 6 *Barb. R.*, 79.

Ely vs. Ehle, 3 *Coms. R.*, 506.

Will it be said that the defendant in error could not sue the plaintiff in error in an action of trespass, in a State court, for the reason that he held a *feri facias* as Deputy U. S. Marshal, against John F. Wright, provided such deputy took the goods and property of the defendant in error on such writ, and converted the same, most certainly trespass could be sustained in a State court, against any officer, and his office nor writ would not protect him; then if trespass could be sustained replevin could according to all the authorities.

VIII.

Replevin lies in a State court for the wrongful ta-

king and detaining goods by a Marshal of the United States.

Mills vs. Martin, 19 *John. R.*, 7.

Bruen vs. Ogden, 6 *Halsted R.*, 370.

Dunn vs. Vail, 7 *Martin R.*, 416. ✕

Slocum vs. Mayberry, 1 *Wheat. R.*, 1.

+ 3 *Martin* 602

That the taking and detaining in this case was wrongful, cannot be questioned here; that is already determined by the jury.

IX.

"The writ of *feri facias* commands the officer to take the goods of the defendant in execution. If he takes the goods of a stranger, he is a trespasser."

England vs. Clark, 4 *Scam. R.*, 486.

Thompson vs. Butler, 14 *John. R.*, 84.

Dunham vs. Wykoff, 3 *Wend. R.*, 280.

Clark vs. Skinner, 20 *John. R.*, 467.

Allen vs. Crary, 10 *Wend. R.*, 349.

X.

Trespass will lie against U. S. officers in State courts, though they may claim to act in an official character.

11 *John. R.*, 377.

13 *John.*, 414.

The defendant in error in this case simply asks that this case may be tried and determined in accordance with those long established rules of all the courts in this Union, and in accordance with the constitution and laws of the land, claiming no more, and is not will-

ing to take any less than that which is guaranteed to himself in common with all other citizens of this State, the right to enjoy and protect his property from wrongful and unjust invasion, and when such unjust invasions are made, the right to appeal to the regularly constituted and lawful tribunals of the State of which he is a citizen, for redress of such grievances, and have the matter disposed of by the judgment of his peers and the law of the land. That his rights were invaded and he unjustly deprived of his property, the evidence would, were it before this court, most clearly show. That he appealed to the proper, and we might say to the only legitimate tribunal for redress, is also evident. That a jury have found in his favor, will not be denied; that the merits are with him, no one questions. Applying, then, those fixed and certain rules, acted upon by both State and National courts from a period covered with the constitution of this nation up to the present time, to this case, there can be no doubt as to the duty of this court. It is a matter of no small importance to the defendant in error—some \$2,500 worth of merchandize were taken wrongfully and unjustly from him, and out of his possession, and an attempt made to sacrifice the same to pay the debts of a man with whom he had no connection whatever. The laws of the State afforded him relief, and he pursued the course the law pointed out to him. We find no case in this State where the same question (as to jurisdiction) has been presented and directly passed upon by this court, though we do find where U. S. Deputy Marshals have been impleaded in actions of replevin, for the wrongful taking and detaining of goods, and no question was raised as to jurisdiction of the State courts, which gives us the practice, at least, of State courts. But

there are other questions in this case that have been passed upon in this court as to the pleas. Upon the whole view of the case, we insist that the judgment of the court below should be affirmed.

CHESTER KINNEY,
JAMES FLETCHER,

Attorneys for Def't in Error.

Chicago Post Company, Printers, 98 Washington St.

IN THE SUPREME COURT

OF THE STATE OF ILLINOIS.

APRIL TERM, 1864.

PARNELL MUNSON,
Plaintiff in Error,

vs.

ALVIN HARROUN,
Defendant in Error.

ERROR TO IROQUOIS.

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2 Affidavit of Alvin Harroun, filed in the Iroquois County Circuit Court, that affiant, Alvin Harroun, is the owner and entitled to the possession of the following goods and chattels, viz: The entire stock of goods in the store, consisting of Boots, Shoes and Dry Goods, Crockery, Hats, Caps, Glassware, Groceries, Yankee Notions, Looking Glasses, Cutlery, &c., &c., also a quantity of Corn, in the buildings known as the old tannery buildings, supposed to be two thousand bushels, also one set of large Scales and two small Scales, and that the same are of the value of two thousand two hundred and fifty dollars, and that on the 11th day of July, A. D. 1861, one Parnell Munson wrongfully took and unjustly detained the said goods and chattels from affiant, that the same have not been taken for any taxes, &c.

3 Writ of Replevin to the Sheriff of Iroquois County, commanding him,
 if the Plaintiff shall give bond, &c., to replevy and deliver the goods and
 chattels above mentioned to the Plaintiff.

4 Returned same by reading the Writ to the Defendant, Parnell Munson,
 and by seizing the property and delivering it to Plaintiff; July 12th, 1861.

5 Replevin Bond in the penal sum of \$4,500.

6 Narr. in the *cepit* for wrongfully taking the above described goods
 and chattels, the property of the Plaintiff, on the 11th day of July, A. D.
 1861, and unjustly detaining the same, whereby Plaintiff hath sustained
 damages to the amount of \$5,000, filed Oct. 24, 1861.

7 Narr. in the *cepit* for wrongfully taking the above described goods and
 chattels, the property of the Plaintiff, on the 11th day of July, A. D. 1861,
 and unjustly detaining the same, in consequence of which the Plaintiff was
 for a long time broken up in his trade, &c., and hath sustained damages to
 the amount of five thousand dollars, filed Nov. 6, 1861.

10 3d. count in the *cepit* for taking the same goods and chattels and de-
 taining the same, whereby the Plaintiff was put to great trouble and expense
 in and about finding the same, &c.

14 Nov. 26, 1861, Defendant moves to strike the second and third counts
 of Plaintiff's Narr. from the files; motion sustained, and ordered that second
 and third counts be stricken from the files, and at the same time Defendant
 files pleas as follows:

15 1. Non. cepit.

2. That the said goods, wares, merchandise and chattels in said first
 count mentioned at the time when, &c., were the property of one John F.
 Wright, and not the property of the Plaintiff.

3. *Actio non*, because that at the said time when, &c., Defendant
 was a Deputy Marshal of the United States, for the Northern District of

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RECORD. Illinois, and as such seized and detained the said goods, &c., by virtue of a *feri facias* issued out of the Circuit Court of the United States for the Northern District of Illinois, on the 10th day of July, A. D. 1861, against one John F. Wright, for the sum of two thousand and ninety-eight dollars and thirty-eight cents, and that by virtue of his office and by virtue of the *feri facias* aforesaid he levied upon the said goods as the property of the said John F. Wright, and that the said goods, &c., were the property of the said Wright and not the property of the Plaintiff.

16 4. That at the time when, &c., Defendant was Deputy Marshal of the United States, for the Northern District of Illinois, and had a Writ of *feri facias* which was issued out of the Circuit Court of the United States in and for said Northern District, on the 10th day of July, A. D. 1861, against one John F. Wright, for the sum, &c., and that by virtue of his office and by virtue of said Writ he did levy upon and take and detain the said goods, &c., as the property of said Wright, without this that said goods, &c., were the property of the Plaintiff.

17 5. That at the said time when, &c., the said Defendant was a Deputy Marshal of the United States, for the aforesaid Northern District of Illinois, and as such levied upon said goods and chattels, by virtue of a *feri facias* issued out of the Circuit Court in and for said District, on the 10th day of July, A. D. 1861, against one John F. Wright and in favor of Eli M. Robbins, George E. Roger, Gershom H. Hard, Emery E. Childs, and Peter B. Acker; and this Defendant levied upon, took and detained said goods and chattels as the property of said John F. Wright, and finding said goods and chattels in the possession of said John F. Wright, and that the same were the property of said John F. Wright, and Defendant avers that said goods and chattels were not the property of said Plaintiff.

6. That at the said time when, &c., Defendant was Deputy Marshal of the United States, for the Northern District of Illinois, and as such Deputy levied upon, took and detained said goods and chattels by virtue of a Writ

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of *feri facias* issued out of the Circuit Court of the United States, in and for the Northern District of Illinois, on the 10th day of July, A. D. 1861, against one John F. Wright, for the sum, &c., and Defendant avers that said goods and chattels were the property of said John F. Wright and not the property of the Plaintiff; and Defendant further avers that by virtue of his office as aforesaid and by virtue of the *feri facias* aforesaid, and by virtue of the levy in pursuance thereof, said goods and chattels are in the custody of the law, and under the authority and jurisdiction of said Circuit Court, in and for said Northern District, whereby said goods and chattels are not replevable by the said Plaintiff.

7. That at the said time when, &c., said Defendant was a Deputy Marshal of the United States, in and for the Northern District of the State of Illinois, and that, acting as such Deputy Marshal, he did levy upon said goods and chattels by virtue of a *feri facias* issued out of the Circuit Court of the United States, in and for said Northern District, on the 10th day of July, A. D. 1861, against one John F. Wright and in favor of Eli M. Robbins, George S. Roger, Gershom N. Hard, Emery E. Childs, and Peter B. Acker, for the sum of \$2098.38, and Defendant avers that finding the said goods and chattels in the possession of the said John F. Wright, he did levy upon, take and detain the said goods and chattels as the property of the said Wright, and by virtue of his said office and by virtue of the Writ of *feri facias* aforesaid, wherefore and by reason of the foregoing premises Defendant saith that said goods and chattels were in the custody of the lawful authority of the United States, and under the direction, jurisdiction and control of the said Circuit Court, in and for said Northern District, and were not replevable from him, a Deputy Marshal as aforesaid, by the Sheriff of Iroquois County, in the State of Illinois, and this the Defendant is ready to verify, &c.

20 Replication to second plea, that the goods, &c., at the said time when, &c., were the property of the Plaintiff. Conclusion to the contrary, and similiter

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RECORD. by Defendant. General demurrer to Defendant's third plea and joinder in demurrer by Defendant.

21 Demurrer to Defendant's fourth plea and joinder.

Demurrer to Defendant's fifth plea and joinder.

Demurrer to Defendant's sixth plea and joinder.

22 Demurrer to Defendant's seventh plea and joinder.

Ordered by the Court that the demurrers be sustained to the third, fourth, fifth, sixth and seventh pleas. Defendant comes and stands by the fifth plea, and on motion, leave is given to Defendant to amend third, fourth, sixth and seventh pleas. Plaintiff comes and files demurrers to third, fourth, sixth and seventh amended pleas, and, after argument, ordered that said demurrers be sustained, and to the decision in sustaining said demurrers, Defendant by his counsel enters his exceptions.

24 Amended third plea that at the time when, etc., said Defendant was a Deputy Marshal of the United States in and for the Northern District of Illinois, duly appointed and commissioned as such, and as such Marshal seized, took, and detained said goods and chattles by virtue of a *feri facias* which he then and there had, issued out of and under the seal of the Circuit Court of the United States in and for the Northern District of Illinois, on the tenth day of July, A. D. 1861, in favor of Eli M. Robbins, George E. Roger, Gershom N. Hard, Emery E. Childs, and Peter B. Acker, against one John F. Wright for the sum, etc., and which said writ of *feri facias* was afterwards, to wit, on to said tenth day of July, delivered to said Defendant as such Deputy Marshal as aforesaid, to execute, and that by virtue of his office as aforesaid, and by virtue of the *feri facias* aforesaid, he afterwards to wit, on the eleventh day of July, A. D. 1861, levied upon the
25 said goods and chattles as the property of said John F. Wright, that said

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goods and chattels were in the possession of said Wright and were not the property of the said plaintiff, which he is ready to verify.

Amended fourth plea, that at the said time when, etc., Defendant was a Deputy Marshal of the United States for the Northern District of Illinois, duly appointed and acting as such, that on the tenth day of July, A. D. 1861, a writ of *feri facias* was duly issued out of and under the seal of the United States in and for said Northern District in favor of Eli M. Robbins *et al*, and against John F. Wright for the sum, etc., and that afterwards, to wit, on the tenth day of July, A. D. 1861, the said writ of *feri facias* came into his hands as Deputy Marshal to execute, that afterwards to wit, on the 11th day of July, A. D. 1861, by virtue of his office and by virtue of the said writ
26 of *feri facias* he did levy upon, take and detain said goods and chattels as the property of the said John F. Wright, Defendant in the said writ of *feri facias*, and Defendant avers that said goods and chattels were the property of the said John F. Wright and not the property of the said Plaintiff, and this he is ready to verify.

Amended sixth plea, that the said Defendant at the said time when, etc., was a Deputy Marshall of the United States for the Northern District of Illinois, duly appointed, qualified, and commissioned as such, and for that heretofore to wit, on the tenth day of July, A. D. 1861, a writ of *feri facias* was issued out of the Circuit Court of the United States in and for said Northern District, duly authorized and under the seal of said Court in favor of Eli M. Robbins and against John F. Wright, for the sum of, etc., (\$2,098 25), and that afterwards to wit, on the tenth day of July, A. D. 1861, the said writ was placed in his hands as such Deputy Marshal to execute, and that by virtue of his said office and by virtue of the said writ of
27 *feri facias* aforesaid, he afterwards to wit, on the eleventh day of July, A. D. 1861, levied upon, took, and detained the said goods and chattels as the property of the said John F. Wright, and finding the said goods and chat-

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tels, the property of the said John F. Wright, which the Defendant is ready to verify.

Amended seventh plea, same as the last down to the sum, and then concludes as follows: which said writ of *feri facias* was afterwards to wit, on the tenth day of July, A. D. 1861, placed in his hands as such Deputy Marshal to execute, and that afterwards to wit, on the eleventh day of July, A. D. 1861, he did levy upon, take, and detain the said goods, wares, etc., by virtue of his office as aforesaid, and under and by virtue of the writ of *feri facias* as aforesaid and not otherwise, whereby and by reason of the aforesaid premises, the said goods and chattels are in the custody and lawful authority of the United States, and under the power, direction, and control of the said Circuit Court of the United States, and were not repleviable from him, Deputy Marshal as aforesaid, by an officer of this Court, and this the Defendant is ready to verify.

29 General demurrer to Defendant's amended seventh plea and joinder.

General demurrer to Defendant's amended sixth plea and joinder.

31 Replication taking issue upon Defendant's amended third plea and similiter.

34 Replication taking issue upon Defendant's amended fourth plea and similiter.

35 Jury empaneled, etc.

36 Verdict for Plaintiff.

37 Motions for new trial and in arrest of Judgment.

Motions overruled and Judgment for Plaintiff.

ERRORS ASSIGNED.

1. The Court erred in sustaining the Plaintiff's demurrer to Defendant's fifth plea.
2. The Court erred in sustaining Plaintiff's demurrer to the Defendant's amended sixth plea.
3. The Court erred in sustaining Plaintiff's demurrer to Defendant's amended seventh plea.

SUPREME COURT OF THE STATE OF ILLINOIS.

PARNELL MUNSON,

Plaintiff in error,

vs.

ALVIN HARROUN,

Defendant in error.

And now comes the said Plaintiff in error, Parnell Munson, by Hoyne, Miller & Lewis, his attorneys, and says there is manifest error in the record and proceedings aforesaid.

1. The Court erred in sustaining Plaintiff's demurrer to the Defendant's fifth plea.
2. The Court erred in sustaining Plaintiff's demurrer to Defendant's amended sixth plea.
3. The Court erred in sustaining Plaintiff's demurrer to Defendant's amended seventh plea.
4. The Court erred in rendering Judgment for the Plaintiff, wherefore said Plaintiff in error prays that the Judgment rendered by said Court may be reversed, etc.

POINTS ON WHICH A REVERSAL OF THE JUDGMENT IS ASKED.

The amended seventh plea (see pages 27 and 28 of Record) sets forth that the Defendant was Deputy Marshal of the Northern District of Illinois, and seized the property in question as the property of one John F. Wright, Defendant, on a Judgment regularly obtained in said Court, under and by a writ of *fi. fa.* issued out of said Court upon said Judgment. The fifth and sixth amended pleas set forth substantially the same facts. Demurrers were filed to these pleas and sustained by the Court. This raises the question whether the officer of the State Court can, by virtue of a process issued from such Court, take property from the possession of an officer of the Federal Court which is in his possession under and by virtue of a writ issued from the latter Court. The Supreme Court of the United States in the case of *Freeman vs. Howe*, 24 Howard, p. 450, decided directly against such right, and we respectfully ask attention to what the Supreme Court says on pages 458 and 459 in reviewing the opinion expressed by Chancellor Kent, which probably controlled the Court in sustaining the demurrers to the pleas.

HOYNE, MILLER & LEWIS,

For Plaintiff in error.

Supreme Court

Barnell Munson
 App in error

vs

Alon Harrison
 App in error

Abstract of record
 & Points &c

Given April 18. 1864

J. S. Seward att

Hoppe Miller & Lewis
 for App in error

SUPREME COURT.

PARNELL MUNSON,

Plaintiff in Error,

vs.

ALVIN HARROWN,

Defendant in Error.

Brf. for Plff in Error.

The main question in this case is whether property taken and held by the marshal under and by virtue of a writ of fieri facias issued out of the Federal court can be replevied in a State court. This question is distinctly raised by the plaintiff's demurrers to the defendant's 5th plea and 6th and 7th amended pleas, which were sustained by the court below. These pleas are set forth on the 3d, 6th and 7th pages of the printed abstract.

1. In *Freeman vs. Howe et al*, 24 Howard, 450, property was taken by virtue of process of attachment issued out of the Circuit Court of the United States against the Vermont and Massachusetts Rail Road Company. The property was replevied in the

State court by Howe and others. The defendant in the replevin suit set up, by way of defence, that he held the property under process issued from the Federal court. This defence was overruled by the Supreme court of Massachusetts, and the case was taken under the 25th section of the Judiciary act to the Supreme Court of the United States. And the Supreme Court, in reversing the judgment of the court below, laid it down as the settled law of that court that where property is held under any process issued by the Federal court it cannot be taken by process issued from the State Court, and that it did not at all depend upon the rights of the respective parties to the property seized, but upon the question which jurisdiction had first attached by the seizure and custody of the property under its process.

It is true that in that case the property was attached under mesne process for the purpose of awaiting final judgment, but the court at pages 458 and 459 apply the principle to a case where the marshal, under an execution against A, seizes the property of B, and say that in such a case the remedy of B is in the Federal court, and that the Federal court must determine the question of its jurisdiction and the validity of its process. It is considered that this principle of leaving to the court first acquiring jurisdiction by a seizure of the property, the right to decide every question arising out of such seizure is indispensable to the harmonious action of the two courts when exercising the powers in the same territorial limits. For the purpose of distinguishing the two jurisdictions and confining the authority of each within appropriate limits, Chief Justice Taney in *Ableman vs. Booth*, 21 Howard, 515-16, says, "The powers of the general government and of the State, although both exist and are exercised within the same territorial limits are yet separate and distinct sovereignties acting separately and independently of each other within their respective spheres. And the sphere of action appropriated to the United States is as far beyond the reach of the judicial process issued by a State judge or a State court as if the line of division was traced by landmarks and monuments visible to the naked eye."

I do not find that this question has ever been decided by our Supreme Court, but it seems to have been settled by the Supreme Court of the United States.

2. When the plaintiff in the original action justifies under a *fi. fa.* he must state the judgment, but the sheriff or officer need not. If the execution is regular on its face he is bound to execute it.—*Com. Dig. Plender*, 3 M., 24. 3 Lev. 20 *Str.*, 509,983. 1184. *Hutchinson vs. Braud*, 9 N. Y. (5 Seld.) 208.

The 6th amended plea states that the execution was issued on the 10th day of July, 1861, that on the same day it came into the defendant's hands, and was levied on the day following, the 11th of July. The facts stated in his plea leave room for no other inference than that the execution was levied before its return day. In other words, it is an argumentative plea, and is good unless specially demurred to for this cause.

3. Whether the defendant acquired any right or title to the property under the process issued by the Federal court, is a question which belongs to the Federal court and not the State courts to determine. It was only necessary to set forth in the plea the fact that such process was issued, and that the property was taken and held under and by virtue of it.—*Freeman vs. Howe*, 24 *Howe*. 257.

Therefore, we do not think that any objection to the form of the plea can be sustained.

4. The defendant's fifth plea and the amended sixth and seventh pleas were not pleas to the jurisdiction of the circuit court, but pleas in bar, and properly so. They each avowed the taking, but state that the property was taken and held under and by virtue of a *fi. fa.* and was therefore in the custody of the law, and in a jurisdiction with which the State court could not interfere. The defendant could not have given the plaintiff a better writ for the plaintiff's remedy was by bill in chancery in the Federal court from which the *fi. fa.* was issued.—*Freeman vs. Howard*, 24 *How.* 460.

At the common law goods taken by the sheriff in execution out of the possession of the defendant in the execution, being in the custody of the law cannot be relieved.—*Thompson vs. Burton*, 14 John, 84-87. *Gardner vs. Campbell*, 15 John, 401. *Cromwell vs. Owens*, 7 Harr. and Johnson 55. *Hagan vs. Lucas*, 10 Peters, 400-403.

The fact that the property had been taken by the Sheriff in execution from the possession of the defendant in the execution, was pleaded in bar without any traverse of the plaintiff's title in 14 John. 84, *Thompson vs. Burton*, and no objection made to it on that ground. The marshal by levy acquired a special property in the goods, and could have maintained an action for them. In *Hogar vs. Lucar*, 10 Peters 403 the pleas in effect set forth his title thus acquired, and this was sufficient to defeat the action on the merits.

In replevin for goods the defendant may plead property in himself or in a stranger, either in abatement or in bar.—1 Chitty Plead. 446.

Says Kent Ch. J. in *Harrison vs. M'Intosh*, 1 John, 384, "The plea of property in a stranger is a good plea, either in abatement or in bar, and entitles a party to a return without avowry *for the possession was illegally taken from him by replevin*," citing 2 Lev. 92; 1 Salk. 94.

That the property was in the custody of the law by virtue of a process issued by the Federal court, is properly pleadable in bar, for the possession was illegally taken from the defendant by the replevin, and the property should be returned to him.

HOYNE, MILLER & LEWIS,
For the Plaintiff in Error.

Supreme Court

"
Samuel Munson

Plff in error

vs
Abner Harwood

Def't in error

Argument for
Plff in error
"

"
Hoyne Miller & Lewis
for Plff in error

Supreme Court

—w " m—
Parnell Munson

Plaintiff in error

vs.

Flora Harroun

Defendant in error
—w " m—

} Brief for Plaintiff in error

The only question in this case is whether property taken and held by the Marshal under and by virtue of a writ of fieri facias issued out of the Federal court can be replevied in a State court. This question is distinctly raised by the plaintiff's demurrers to the defendant's 5th plea and 6th and 7th amended pleas which were sustained by the court below. These pleas are set forth in the 3rd 6th and 7th pages of the printed abstract.

In Freeman vs. Howe et al. 24 Howard 450. property was taken by virtue of process of attachment issued out of the Circuit Court of the United States against the Vermont and Massachusetts Rail Road Company. This property was replevied in the State court by Howe and others. The defendant in the replevin suit set up by way of defense that he held the property under process issued from the Federal court. This defence was overruled by the Supreme Court of Massachusetts and the case was taken under the 25th section of the Judiciary act to the Supreme Court of the United States, and the Supreme Court, in reversing the judgment of the court below, laid it down as the settled law

of that court that when property is held under any process issued by the Federal court it cannot be taken by process issued from the State court, and that it did not at all depend upon the rights of the respective parties to the property seized but upon the question which jurisdiction had first attached by the seizure and custody of the property under its process.

It is true that in that case the property was attached under mesne process for the purpose of awaiting final judgment but the court at pages 458 & 459 apply the principle to a case where the Marshal under an execution against A seizes the property of B. and say that in such a case the remedy of B. is in the Federal court and that the Federal court must determine the question of its jurisdiction and the validity of its process. It is considered that this principle of leaving to the court first acquiring jurisdiction by a seizure of the property the right to decide every question arising out of such seizure, is indispensable to the harmonious action of the two courts when exercising these powers ^{with} in the same territorial limits. For the purpose of distinguishing the two jurisdictions and confining the authority of each within appropriate limits, Chief Justice Taney in *Ableman vs. Booth*, 21 Howard, 515-516, says "The powers of the general government and of the State, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties acting separately and independently of each other."

"within their respective spheres. And the sphere of action
"appropriated to the United States is as far beyond the
"reach of the judicial process issued by a State Judge
"or a State Court, as if the line of division was traced
"by land marks and monuments visible to the naked
"eye."

I do not find that this question has ever been decided
by our Supreme Court, but it seems to have been set-
tled by the Supreme Court of the United States.

Hoynes, Miller & Lewis
For Plaintiff in error

57 11
Supreme Court of Ills.
— " —

Munson
vs
Harroun

— " —
Brief for Plaintiff in error
— " —

Filed May 5, 1864
J. L. Smith

Hoynes, Miller & Lewis
For Plaintiff in error.

To all to whom these presents shall come, Greeting;

Know ye that we have caused to be inspected the Records and proceedings remaining in the office of the Clerk of the Circuit Court in and for the County of Jroguinsnd State of Illinoisnd and find therein certain Records and proceedings in the words and figures following to wit;

United States of America
State of Illinois
Jroguins County

Pleas before the Honorable

Charles R. Starr Judge of the twentieth Judicial Circuitnd
Presiding Judge of the Jroguins County Circuit Court
in the State of Illinois at a term of the said Jroguins
County Circuit Court begun and held at the Court House
in the town of Middleport in said Jroguins County on the
third Tuesday (the same being the nineteenth day) in the
Month of November in the year of our Lord one Thousand
Eight hundrednd Sixty one.

Present Hon Charles R. Starr Presiding Judge of the Twentieth Judicial^{Circuit,}
Charles H. Wood States Attorney of the Twentieth Judicial Circuit.
Luther P. Clark Sheriff of Jroguins County Illinois.
Thomas Vennum Clerk of the Jroguins County Circuit Court.

Be it remembered that on the 12th day of July A.D. 1861,

there was filed in the Office of ^{the} Clerk of the Circuit Court of Iroquois County an affidavit which reads in words and figures following, to wit:

State of Illinois, }
Iroquois County. } ss. Alvin Harroun being duly sworn doth depose and say, that he is the owner of ~~the~~ entitled to the possession of the following Goods and Chattels, viz: The entire Stock of Goods in the Store consisting of Boots & Shoes Dry goods, crockery, hats & caps glassware, Groceries Yankee notions Looking glasses Cutlery &c also a quantity of corn in the building known as the old Tannery building, supposed to be two thousand bushels Also one set of, Large Scales & two small scales, And that said Goods and Chattels are of the value of Two ~~one~~ Thousand two hundred and fifty Dollars.

That on the 11th day of July A.D. 1861, one Farnell Munson wrongfully took and unjustly detains the said Goods and Chattels from this affiant, and that said Goods and Chattels have not been taken for any tax, assessment or fine levied by virtue of any law of this State; nor seized under any execution or attachment against the Goods and Chattels of this affiant liable to execution or attachment.

Subscribed and sworn to before me, this }
12th day of July 1861, }
Thomas Vennum Clerk }
By W. H. Taylor dept }

Alvin Harroun

And afterwards to wit on the said 12th day of July 1861 there was issued from the office of the Clerk of said Court a writ of Replein in words and figures following, to wit:

State of Illinois }
Iroquois County }

The People of the State of Illinois to the Sheriff of said County. Greeting:

Whereas, Alvin Harroun of said County, complains that Parnell Munson did wrongfully take ^{and} unjustly detains from said Alvin Harroun of the County of Iroquois aforesaid, The following goods ^{and} Chattels Viz:

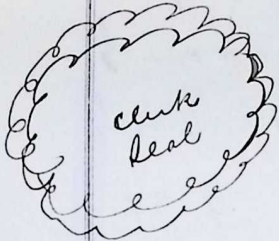
The entire Stock of Goods in the Store consisting of Boots & Shoes, Dry Goods, Crockery, Hats & Caps, Glass ware, Groceries, Yankee notions, Looking Glasses Cutlery &c &c,

Also a quantity of Corn in the Building known as the old Tannery Building supposed to be Two Thousand Bushels ^{and} one sett of Large Scales ^{and} Two Small Scales ^{and} that said Goods ^{and} Chattels are of the value of Two Thousand Two hundred & fifty Dollars

We, therefore, command you, that if the said Plaintiff shall give you bond and security in double the value of the said goods and chattels, as required by law to prosecute suit in this behalf to effect and without delay, and to make return of said goods ^{and} chattels, if return thereof shall be awarded, and to save and keep you harmless in replevying said goods and Chattels, that you replevy and deliver the said goods and chattels to the said Plaintiff without delay.

And, also, that you summon the said Defendant to be and appear before the Circuit Court of said County,

on the first day of the next term thereof, to be holden at the Court house, in Middleport, on the nineteenth day of November next, to answer the said Plaintiff in the premises; and have you then and there this writ, together with the bond which you shall take of the said Plaintiff, as before commanded, before executing this writ:



Witness, Thomas Vennum, Clerk of our Circuit Court, At the seal thereof, hereto affixed, at my office, in Middleport, this Twelfth day of July AD 1861

Thomas Vennum Clerk

By W.H. Taylor dep^d

And on the back of said writ is the following endorsement

State of Illinois }
Groguis County } es.

Served the within writ by reading the same to the within named Parnel Munson and by receiving the within described property of the said Parnel Munson and delivering the same to Alvin Harmon this 12th day of July AD 1861

Fees
Service .50
Taking Bond, .50
delivering property .50
milage .05
return ~~1.00~~
\$ 1.65

Luther T. Clark

Sheriff of Groguis County

and afterward on the said 12th day of July 1861 there was filed in the office of said Clerk a Bond which reads as follows

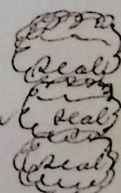
Know all men by these presents, That we Alvin Harrison^{and}
Hamilton Jefferson & Hiram Pratt are held and firmly
bound unto Luther T. Clark Sheriff of the County of
Iroquois in the State of Illinois, and to his successors^s
in office, executors, administrators and assigns, in the
penal sum of Four Thousand ^{and} five hundred Dollars,
lawful money of the United States, for the payment of which
sum we do hereby jointly and severally bind ourselves,
our heirs, executors and administrators.

The Condition of this Obligation is such, that whereas,
on the 12th day of July in the year of our Lord one thousand
eight hundred and Sixty one the said Alvin Harrison &
sued out of the Circuit Court of Iroquois County aforesaid, a
writ of Replevin against Parnell Munson Defendant, for
the recovery of the following described goods and chattels,
property, to wit: The entire Stock of goods in the store
consisting of boots & shoes, dry goods, crockery, hats & caps
glass ware, groceries, Yankee notions, looking glasses, cutlery,
&c &c &c, also a quantity of corn in the building known as
the old tannery building supposed to be two thousand bushels
also one set of large scales and two small scales,

Now, if the said Alvin Harrison the said Plaintiff, shall
prosecute his said suit to effect, and without delay, and make
return of the said property, if return thereof shall be awarded,
and save and keep harmless the said Sheriff in replevying
the said property, then this obligation to be void; otherwise
to remain in full force and effect.

Witness our hands^{and} seals this 12th day of July A.D. 1861. Alvin Harrison
Signed, Sealed^{and} delivered
in presence of
S. G. Bowie

Hamilton Jefferson
Hiram Pratt



and afterward to wit on the 24th day of October AD 1861
there was filed in the office of the Clerk of said Court a
declaration which reads as follows,

State of Illinois
Iroquois County }
vs

Iroquois Circuit Court of the November
Term AD 1861

Alvin Harrison }
vs }
Parnell Munson }

Parnell Munson defendant in this
suit was summoned to answer

Alvin Harrison plaintiff in this suit, of a plea wherefore
he wrongfully took the following goods and Chattels,
to wit the entire stock of goods in the store occupied
by the said plaintiff in the town of Middleport in said
County of Iroquois consisting of ~~hats~~ boots & shoes, dry
goods, crockery, hats & caps, glass ware, groceries, Yankee
notions, Looking glasses Cutlery &c, also a quantity of
corn in the building known as the old tannery building
in said town of Middleport in the County of Iroquois
aforesaid supposed to be two thousand bushels, also one
set of Large scales and two small scales of the said
plaintiff and unjustly detained the same (against
sureties & pledges) until &c And thereupon the said
plaintiff by Kinney & Borie & James Fletcher his attorneys
complains, for that the said defendant on the eleventh
day of July in the year of our Lord one thousand eight
hundred and sixty one in the Town of Middleport in

said County of Iroquois wrongfully and unlawfully took the entire stock of goods in the store occupied by the said plaintiff consisting of boots and shoes, dry goods, crockery, hats & caps, glass ware, groceries, Yankee notions, looking glasses, cutlery &c & also a quantity of Corn in the building known as the old Tannery building in said town of Middleport in the County aforesaid supposed to be two thousand bushels, also one set of large scales and two small scales of him the said plaintiff of great value to wit of the value of two thousand two hundred and fifty Dollars and unjustly detained the same (against sureties & pledges) until &c wherefor the said plaintiff saith that he is injured and hath sustained damage to the amount of Four thousand dollars and therefore he brings suit &c

Kinney & Bonie &
James Fletcher
attys for Plff

and afterwards to wit on the 6th day of November AD 1861 there was filed in the office of the Clerk of said Court a declaration which reads as follows,

State of Illinois
Iroquois County &

Alvin Harmon }
vs }
Parnell Musson }
_____ }

Iroquois County Circuit Court of the
November Term AD 1861.

And whereas the said Parnell

Munson, defendant, ⁱⁿ this suit who was summoned to answer, Alvin Harroun plaintiff in this of a plea whereof he ^{wrongfully} ~~respectfully~~ took certain goods and chattels, wares and merchandises ^{the property of the plaintiff hereinafter} set forth. - And Thereupon the said plaintiff by Kinney and Bowie and James Fletcher his attorneys complain for that the said defendant on the Eleventh day of July in the year of our Lord one thousand eight hundred and sixty one at the Town of Middleport in the said County of Ingham in said State wrongfully and unjustly took certain goods wares and merchandises & chattels to wit;

The entire Stock of Goods in the Store occupied by the said plaintiff in the said Town of Middleport consisting of Dry goods, crockery, hats and caps, glass ware, groceries, Yankee notions, looking glasses cutlery &c &c Also a quantity of corn in the building known as the old Tannery Building in the said Town of Middleport, supposed to be Two Thousand Bushels, also one sett of Large Scales, ^{And} two small scales the property of him the said plaintiff of great value to wit of the value of two thousand and two hundred and fifty dollars and wrongfully - unlawfully & unjustly detained the same. In consequence of which wrongful, unjust and unlawful taking and detaining, as herein before mentioned, the said plaintiff was for a long time broken up in his trade and business, and deprived of the use of his Store, and the use of his said goods so as aforesaid wrongfully & unjustly taken and for a long time prevented and wholly deprived of vending and selling the same, and compelled to and did lose a large amount of trade and profits & gain, thereby in consequence of such unjust and wrongful acts,

doings, and proceedings on the part of and by the said defendant, and was not only put to great trouble ^{and} expense, but was compelled to pay lay out and expend large sums of money, in and about, endeavoring to find his said goods wares and merchandize, so as aforesaid wrongfully & unjustly taken and detained, and in and about recovering his said goods wares and merchandize, and in and about replenishing his said goods. And was also greatly damaged injured, and sustained great loss of time and money in consequence of not having access to his books and papers, locked up and kept out of the plaintiffs possession by the said defendant wrongfully & unjustly. And the plaintiff further saith that he was and has been greatly damaged and hath sustained great injury, in consequence of such wrongful and unlawful taking as aforesaid, and was in consequence thereof deprived of and lost a large amount of trade, and prevented and deprived of selling a large amount of goods wares and merchandize and thereby lost and was deprived of all the profits benefits and advantages which might and would otherwise have arisen & accrued to him therefrom

And also was greatly damaged and injured by his the said plaintiffs customers being driven away from him, and compelled to go to other places & stores to trade. And was also greatly damaged and injured in his credit in buying and selling goods. And also by being dispossessed of his said goods wares & merchandize & and turned out of and dispossessed of his said store, by the said Deft and was also compelled to and did pay

lay out and expend a large sum and amount of money,
as rent for the use and occupation of said Store and was
also compelled to and did pay lay out and expend a
large amount of money for clerk hire while said Defendant
was depriving the said plaintiff of the use of said Store^{and}
the services of his said plaintiffs clerks. And plaintiff
also saith that he hath otherwise sustained great damage
and hath been otherwise greatly injured, in his business
And hath sustained damage to the amount in all to
the sum of five thousand Dollars, and therefore he
brings suit &c

Kinney & Bovie &
James Fletcher
Plffs attys,

State of Illinois }
Proquins County } ss

Alvin Harriman }
vs }
Parnell Munson }

Proquins County Circuit Court
of the November Term AD 1861

And whereas the said Parnell Munson
defendant in this suit who was summoned to answer
Alvin Harriman plaintiff in this suit of a plea whereof
he wrongfully took certain goods and Chattels wares and
merchandizes the property of the plaintiff herein after set
forth, and thereupon the said plaintiff by Kinney &
Bovie & James Fletcher his attorneys complains for that
the said defendant on the Eleventh day of July in

the year of our Lord one thousand eight hundred and sixty one
at the Town of Middleport in the said County of Iroquois,
in said State, wrongfully and unlawfully took
certain goods wares merchandize & chattels, to wit,
the entire stock of goods in the store occupied by the said
plaintiff in the said Town of Middleport, consisting of
dry goods, crockery, hats and caps, glass ware, groceries
yaukee notions, looking glasses cutlery &c &c, also a
quantity of corn in the Building known as the old Tannery
Building in said Town of Middleport supposed to be —
Two Thousand Bushels, also one sett of large scales and
two small scales, the property of him the said plaintiff,
of great value to wit of the value of two thousand two
hundred and fifty Dollars and wrongfully unlawfully
& unjustly detained the same, wherefor the said plain-
tiff was not only put to great trouble and expense and
has sustained great damage, amounting in all to
a large sum of money to wit, to the sum of five —
Thousand dollars, in and about endeavoring to find his
said goods chattels wares and merchandize so as
aforesaid wrongfully taken, by the said defendant, in
and about receiving his said goods, in and about
replevying his said goods wares and merchandize
and by being deprived of the use and occupancy of
his said store for a long space of time, and by being
deprived of selling vending and disposing of said
goods, by a great loss of credit in his business of
merchandizing, selling vending & trading as well as
in buying and purchasing, goods wares and merchandize

by being deprived of all the profits and benefits and
of carrying on his said business of vending selling
and disposing of said goods & advantage which might
and otherwise would have arisen and accrued to him
therefrom by being dispossessed and turned out of the
possession of his said store and by being deprived of
the use and possession of his said goods, and was
further greatly damaged and injured in consequence
of his the plaintiffs customers being driven away from
him, and did go and was compelled in consequence of
such wrongful taking and detaining of the goods wares
and merchandize as herein aforesaid, to go away
to other stores and trade, purchase and buy goods wares
and merchandize, whereby the plaintiff lost and was
deprived of all the profits benefits and advantages which
otherwise would have arisen and accrued to him
therefrom to wit at the county and State aforesaid,

And the said plaintiff saith that he is otherwise
greatly injured and hath otherwise sustained great
damages to the amount of Five thousand dollars
and therefore he brings suit &c.

Kinney & Bone &
James Fletcher
Attys for Plf

" Alvin Harriman }
" 340 -vs- } Replevin -
" Parnell Munson }

and afterwards Court, on the Twenty first day of November in the year last aforesaid - it also being one of the regular days of the November Term of said Court for said year 1861, and the said Court being then duly organized and sitting as aforesaid, the following proceedings were had and entered of Record by the said Court, To-wit,

" Alvin Harmon }
" 340 vs } Replevin—
" Parnell Munson }

And now comes the defendant by Jones
 & Blades ^{and} Paddock his attorney and withdraws the

" motion to strike the declaration from the files, and
" on motion the rule on the defendant to plead is hereby
" extended till ten o'clock tomorrow morning

And afterwards To wit on the Twenty sixth day of
November 1861 it also being one of the regular days of the
November Term of said Court for the year last aforesaid
and the said Court being then duly organized and sitting
as aforesaid, the following proceedings were had and entered
of record as follows To wit

" Alvin Harmon }
" 340 vs } Replevin
" Parrell Munson }

" and ^{now} comes the defendant into Court by
" James Blades Paddock ^{and} Chase his attorneys and files
" herein a plea to the first Count of Plaintiffs declaration
" and also enters his motion to strike the second ^{and} third
" Counts of said declaration from the files of this Court,
" ordered that the second ^{and} third Counts be stricken
" from the files: And now come the Plaintiffs attorneys
" and enter their exception to the decision of the Court

And the defendants pleas read in words and figures following
~~And afterward To wit on the Twenty sixth day of~~
~~November AD 1861, there was filed in the office of the~~
~~Clerk of said Court certain pleas which reads in words and~~
~~figures following, To wit,~~

In the Troguis Circuit Court,
of the November Term AD 1861

Parnell Munson }
 ats } Replevin
Alvin Harriman }

and the said defendant by Joiner,
Blades, Chase & Paddock, his attorneys comes and defends
the wrong & injury when &c and as to the first count
of said declaration, says that he did not take and
detain the said goods, wares merchandise & chattels in said
first count mentioned or any or either of them or any
part thereof, in manner and form as the said plaintiff
hath above thereof complained against him, and of
this the said defendant puts himself upon the country
&c

and the Deft
doth the like

Joiner, Blades Chase & Paddock
Attys for Deft.

And for a further plea in this behalf the said
defendant as to the first count says Actio Non
Because he says that the said goods, wares, merchandise
& chattels in said first count mentioned at the time
when &c, were the property of one John F. Weight and
not the property of the said plaintiff as by said first
count is above supposed - and this the said defendant
is ready to verify wherefore he prays judgment &c
Joiner Blades Chase & Paddock

Attys for Deft

And for a further plea in this behalf the said

3
defendant as to the said first count of said
declaration Says Actis now Because he says that at
the time when &c the said defendant was a deputy
marshall of the United States for the northern district of
Illinois and as such seized took ^{and} detained the said goods
wares merchandise & chattels by virtue of a fiere facias
issued out of the Circuit Court of the United States in
and for said northern district on the 10th day July AD 1861
against one John F. Wright for the sum of Two
Thousand and ninety eight dollars and thirty eight cents
and that by virtue of his office as aforesaid and virtue
of the fiere facias aforesaid he levied upon the said goods
wares merchandise & chattels as the property of the said
John F. Wright, and the said defendant avers that the
said goods, wares merchandise & chattels were the property
of John F. Wright and not the property of the said plaintiff
and the said defendant is ready to verify wherefore he prays
judgment &c

James Blades Chase ^{and} Paddock
Attys for Deft.

4
And for a further plea in this behalf the said defendant
as to the said first count Says Actis now Because he
says that at the time whereas &c the said defendant was a
Deputy Marshall of the United States for the northern district
of Illinois; and the defendant then and there being &
acting a deputy marshall aforesaid had a writ of
fiere facias which was issued out of the Circuit Court
of the United States in and for said northern district
on the 10 day of July AD 1861 against one John F.
Wright for the sum of Two Thousand and ninety eight dollars

and thirty eight cents, and that by virtue of ^{his} office
aforesaid, and by virtue of the fieri facias aforesaid he
did levy upon take and detain ^{the} said goods wares
merchandise and chattels as the property of the said John
F. Wright and finding the said goods wares merchandise
& chattels in the possession of the said John F. Wright
without this the said goods wares merchandise & chattels
were the property of the plaintiff and this the defendant
is ready to verify wherefore he prays judgment &c
Gomer Blades & Paddock & Chase

Attys for Deft

5
and for a further plea in this behalf the said defendant
as to the said first count of said declaration says —
Actio non Because he says that at the ^{time} when &c the
said defendant was a deputy Marshall of the United States
for the northern district of Illinois and as such levied
upon took & detained the said goods wares merchandise
and chattels by virtue of a fieri facias issued out of
the Circuit Court of the United States in and for the said
northern district on the 10th day of July AD 1861 against
one John F. Wright and in favor of Eli M. Robbins George
E. Royce Gershon N. Hard, Emery & Childs & Peter B. Acker
and defendant avers that he levied upon took & detained
the said goods wares merchandise & chattels as the property
of John F. Wright and finding the said goods wares
merchandise & chattels in the possession of the said John
F. Wright and that the same were the property of said Wright
and defendant further avers that the said goods wares
merchandise & chattels were not the property of the said
plaintiff — and this defendant is ready to verify

wherefore he prays judgment &c
Joiner, Blades, Chase ^{And} Paddock
attys for Deft.

6
and for a further plea in this behalf the said defendant,
as to the said first count, says actis non Because he
says, ^{that} at the time when &c he was a deputy Marshall of
the United States for the northern district of Illinois and
as such deputy marshall he did levy upon, take and
detain the said goods, wares, merchandise & chattels
by virtue of a writ of fieri facias issued out of the
Circuit Court of the United States in and for said district
on the tenth day of July AD 1861 against one John F. Weight
for the sum of Two thousand and ninety eight dollars
& thirty eight cents, and defendant avers that the said
goods, wares, merchandise & chattels were the property of
the said John F. Weight and not the property of the
plaintiff, and defendant further avers that by reason
of his office as aforesaid and by virtue of the fieri facias
aforesaid and by virtue of the levy in pursuance thereof
the said goods, wares, merchandise, and chattels were
in the custody of the law and under the authority and
jurisdiction of the Circuit Court in & for the said northern
district, whereby the said goods, wares, merchandise
were not replevisable by the said plaintiff -
and this the defendant is ready to verify wherefore he
prays judgment &c

Joiner, Blades, Chase & Paddock
attys for Deft

and for a further plea in this behalf the said

defendant as to the said first Count Says actis non
Because he says that at the time when &c
he was a deputy Marshall of the United States for the
Northern district of Illinois and that acting as such
deputy Marshall he did levy upon, take and detain
the said goods, wares, merchandise & Chattels by virtue
of a fieri facias issued out of the Circuit Court of
the United States in and for said northern district
on the 10th day of July A.D. 1861 against one John F.
Wright and in favor of Eli M. Robbins George S. Royce
Gershon N. Hard, Emory & Childs & Peter B. Acker for
the sum of Two thousand & ninety eight dollars & thirty
eight cents, and defendant avers that finding the said
goods, wares, merchandise & Chattels in the possession
of the said John F. Wright he did levy upon take & detain
the said goods, wares, merchandise & Chattels as the
property of the said Wright by virtue of his said office
and by virtue of the fieri facias aforesaid
wherefore and by reason of the foregoing premises
the said defendant saith that the said goods, wares
merchandise & Chattels were in the custody of the
lawful authorities of the United States and under the
direction, Control & Jurisdiction of the Circuit Court
in and for said Northern district and were not
replevisable from him deputy Marshall as aforesaid
by the Sheriff of Iroquois County & State of Illinois at the
instance of the plaintiff - and this the said defendant
is ready to verify wherefore he prays Judgment &c
for him. Blades, Chase & Paddock
attys for Dft

And afterwards on the Twenty seventh^{day} of November 1861
it being one of the regular days of the November Term of said Court
for the year 1861, and the said Court being then duly organized and
sitting in open Court for the transaction of business the following
proceedings were had and entered of Record by the said Court in
the ends & figures to wit;

" Alvin Harrison }
" 340 as } Replevin
" Parrell Munson }

" and now comes the Plaintiff into Court
by Kinney, Borie and Fletcher his attorneys and files demurrers
to the defendants third, fourth, fifth, sixth and seventh —
pleas

and following on the 27th day of November A.D. 1861 there was
filed in Court a Replications
which reads as follows

State of Illinois }
Joquais County }

Alvin Harrison }
os }
Parrell Munson }

November Term Joquais Circuit Court
A.D. 1861

And the said plaintiff as to the plea of the
said defendant by him secondly above pleaded says
that the said plaintiff by reason of anything by the
said defendant in that plea alleged ought not to be
barred from having and maintaining his aforesaid
action thereof against the said defendant because

he says that the said goods, wares and merchandise
and Chattels in the said declaration mentioned were at
the said Time when &c the property of the said plaintiff
and not the property of the said John F. Wright as in
said plea of the said defendant secondly by him
above pleaded is alleged and this he prays may be inquired
of by the country

Kinney, Bowie & Fletcher

Plffs attys

and there was also on the said 27th day of November
filed in said Court, Demurrers which read as
follows, To wit:

State of Illinois }
Iroquois County } es,

November term of the Iroquois
Circuit Court AD 1861.

Min Harmon }
as }
Parnell Munson }

and the said plaintiff by Kinney, Bowie &
Fletcher his attys says that the said avowry of the said
defendant in his third plea mentioned and the matters
and things therein contained in manner & form as
the same ^{are above} ~~above~~ pleaded & set forth are not
sufficient in law and this the said plaintiff is ready
to verify wherefore he prays judgment &c

Kinney, Bowie & Fletcher

Plffs attys

and said defendants join in Demur
Joines & Blades Chase & Paddock
attys for Deft

second said Defendant doth like
Joines & Blades Chase & Paddock
at for Deft

Demurrers
to 3 pleas

State of Illinois }
Joguin's County }

Norman Term Joguin's County
Circuit Court A.D. 1861

Alvin Harrison }
as }
Parrell Munson }

and the said plaintiff by Kinney, Borie
& Fletcher his attys says that the said avowry of the said
defendant in his forth plea mentioned and the matters
and things therein contained in manner and form as
the same are above pleaded & set forth, are not
sufficient in law, and this the said plaintiff is ready
to verify whereof he prays judgment &c

Kinney Borie & Fletcher

and the said defendant joins in summon Plffs Attys
Joines & Blades Chase & Paddock }
attys for Dft }

State of Illinois }
Joguin's County }

Alvin Harrison }
as }
Parrell Munson }

Norman Term Joguin's County
Circuit Court A.D. 1861

and the said plaintiff by Kinney, Borie,
and Fletcher his attorneys, says that the said avowry of

Demurrer
to 4 plea

Demurrer
to 5th plea

the said defendant in ^{his} fifth plea mentioned and
and the matters and things therein contained in manner
& form as the same are above pleaded & set forth are not
sufficient in law, and this the said plaintiff is
ready to verify whereof he prays judgment &c

Kinney Bowie & Fletcher

attys for Plffs

and the said Defts join in demurrer
Joiner & Blades Chase & Paddock
attys for Deft

State of Illinois }
Troyer's County }

November term of the Troyer's
Circuit Court AD 1861,

Alvin Harmon }
vs }
Jarnell Munson }

D^o
to 6th Plea

and the said plaintiff says that the
said averry in the sixth plea of the said defendant
and the matters and things therein pleaded are not
sufficient in law and this the plaintiff is ready to
verify whereof he prays judgment &c

Kinney & Bowie & Fletcher

Plffs attys

and said Defts join in demurrer
Joiner & Blades, Chase & Paddock
attys for Deft

State of Illinois }
Jogues County }

Alvin Harmon }
vs }
Parnell Munson }

November Term of the Jogues
Circuit Court AD 1861

Dem
to 7 P

and the said plaintiff says that the
said averry in the seventh plea of the said defendant
and the matters and things therein pleaded are not
sufficient in Law and this the said plaintiff is
ready to verify wherefore he prays Judgment &c

Winney Bone & Fletcher

Plffs attys

and the said depts join in demur
Joiner Blades Chase & Paddock
Attys for Deft

And afterwards To wit, on the Twenty eighth day of
November in the year 1861 it being one of the regular days of
the November Term of said Court for the year last aforesaid
and the said Court being then duly organized & sitting for the
transaction of business the following proceedings were had &
entered of Record by said court in the words & figures
To wit,

" Alvin Harmon }
" 349 vs } Replevin
" Parnell Munson }

The demurrers to the defendants pleas

coming up for argument it is ordered by the Court
that the said demurrers be sustained to the defendants
third, fourth, fifth, sixth and seventh pleas

and afterwards Court on the 29th day of November 1861
it being one of the regular days of the November term of said
Court for the year last aforesaid and the said Court being
then duly organized and sitting the following proceedings
were entered of Record by said Court Court,

" Alvin Harrison }
" 340 vs } Replevin
" Parnell Munson }

" and now comes the defendant and stands by
" the fifth plea^{and} on motion leave is given to defendant to
" amend the third, fourth^{and} sixth^{and} seventh pleas and now
" comes the plaintiff by his attorneys and files herein demurrers
" to defendants sixth and seventh amended pleas^{and} the Court
" having heard the arguments of counsel upon said demurrers
" ordered that the same be sustained^{and} to the decision of the Court
" in sustaining said demurrers the defendant by his counsel
" enters his exceptions.

And the defendants said amended pleas read as follows
~~and afterward on the Twenty ninth day of November in~~
~~the year 1861 there was filed in the office of the clerk of~~
~~said Court, amended pleas which reads in words~~
~~and figures following Court,~~

In the Iroquois County Circuit Court
of the November Term 1861

Parnell Munson }
ads }
Alvin Harroun }

Amended
3^d Plea

and for a further plea in this behalf the said defendant Parnell Munson by Joiner & Blades & Chase & Paddock his attorneys as to said first Count of said declaration says Actus non Because he says that at the time when &c the said defendant was a deputy Marshall of the United States in & for the northern District of Illinois duly appointed and commissioned as such and as such seized took and detained the goods wares, merchandise and Chattels in said declaration mentioned by virtue of a fieri facias which he then & there had issued out of and under the seal of the Circuit Court of the United States in and for said northern district of Illinois on the 10th day of July A.D. 1861 in favor of Eli M. Robbins, George E. Royce Gershom N. Hard Emery & Childs ^{&c} Peter B. Acker against one John F. Wright for the sum of Two Thousand and ninety eight Dollars and thirty eight cents & which said writ of fieri facias was afterwards to wit on the said 10th day of July 1861 delivered to the said defendant as such deputy Marshall as aforesaid, to execute, and that by virtue of his office as aforesaid and by virtue of the fieri facias aforesaid he afterwards to wit on the 11th day of July 1861 levied upon the said goods, wares, — merchandise & chattels in said declaration mentioned

as the property of the said John F. Wright defendant in
said writ of fieri facias named. And the said
defendant avers that the said goods, wares, merchandise
& chattels were in the possession of the said John F. Wright
& were the property of the said John F. Wright and not the
property of the said plaintiff, and this the said defendant
is ready to verify wherefore he prays judgment &
Joines Blades Chase & Paddock

Attys for Dft

amended
H. M. P. L.

and for a further plea in this behalf the said
defendant Says actis non Because he say that at the
time when &c he was a deputy marshall of the
United States for the northern district of Illinois duly
appointed and acting as such; that on the 10th day of
July A.D. 1861 a writ of fieri facias was duly issued out
of and under the seal of the Circuit Court of the United
States in and for said northern district in favor of
Eli M. Robbins, George E. Royce, Gershon N. Hard, Emory E.
Childs and Peter B. Acker and against John F. Wright
for the sum of Two thousand ninety eight dollars and
thirty eight cents, and that afterwards to wit on the 10th
day of July A.D. 1861 the said writ of fieri facias came
into his hands as deputy marshall to execute; that
afterwards to wit on the 11th day of July A.D. 1861, by
virtue of his said office and by virtue of the said
writ of fieri facias he did levy upon take and detain
the said goods, wares, merchandise & chattels in said
declaration mentioned as the property of the said
John F. Wright defendant in the writ of fieri facias

aforesaid, and defendant avers that the said goods
wares, merchandise & chattels were the property of the
said John F. Wright and not the property of the said
plaintiff. And this the said defendant is ready to
verify—wherefore he prays judgment &c

Joimer, Blades, Chase & Paddock
attys for Defs

and for a further & further plea in this behalf the
said defendant comes and says that this Court ought
not to have or take any further Cognizance of the action
aforesaid Because he says that the ^{said} supposed Cause
of action (if any has occurred to the plaintiff) occurred
to the plaintiff out of the jurisdiction of this Court for
that the said defendant at the time when &c was a
deputy marshall of the United States for the northern
district of Illinois duly appointed qualified & commissioned
as such; and for that heretofore to wit on the 10th day of
July AD 1861 a writ of fieri facias was issued out of
the Circuit Court of the United States in and for said
Northern District duly authenticated and under the
seal of said Court in favor of Eli M. Robbins, George
E Royce Gershorn & Hord Emery & Childs & Peter B
Ackes and against one John F. Wright for the sum
of Two Thousand ninety eight dollars & thirty eight cents
and that afterwards to wit on the 10th day of July AD 1861
the said writ was placed in his hands, as such deputy
marshall to execute, and that by virtue of his said
office, and by virtue of the writ of fieri facias
aforesaid he afterwards to wit on the 11th day of July AD 1861

Amended
6th Plea

levied upon took & detained the said goods, wares, merchandise & chattels as the property of the said John F. Wright and finding the said goods, wares, merchandise & chattels in the possession of the said John F. Wright and defendant is ready to verify this wherefore he prays judgment &c

Forner, Blados, Chase & Paddock

Attys for Deft

And for a further plea in this behalf the said defendant comes and says that this court ought not to have or take further cognizance of the action aforesaid — Because he says that the said supposed cause (if any ^{has} accrued to the plaintiff) accrued to the plaintiff out of the jurisdiction of this Court for that the said defendant at the time when &c was a deputy marshall of the United States for the northern district of Illinois duly appointed and qualified as such; and for that heretofore to wit on the 10th day of July A.D. 1861 a writ of fieri facias was issued out of the Circuit Court of the United States in and for said northern district, duly authenticated and sealed with the seal of said Court, in favor of Eli M Robbins, George E Royce Gershom A Hard, Emory E, Childs & Peter B Acker and against John F. Wright for the sum of Two Thous and ninety eight dollars & thirty eight cents, which said writ of fieri facias was afterwards to wit on the 10th day of July A.D. 1861 placed in his hands as such deputy marshall to execute; and that afterwards to wit on the 11th day of July A.D. 1861 he did levy

amended
2^d plea

upon take and detain the said goods, wares,
merchandise & chattels by virtue of his office as aforesaid
and under & by virtue of the writ of fieri facias
aforesaid, ^{and not otherwise} whereby and by reason of the foregoing
premises the said goods, wares, merchandise & chattels
were in the Custody of the lawful authorities of the
United States and under the jurisdiction & control of the
said Circuit Court of the United States and were
not replevisable from him, deputy marshal as
aforesaid by an officer of this Court, and this the
defendant is ready to verify wherefore he prays
judgment &c

John. Blades Chase & Paddock
attys for Deft

and afterwards on the said Tenth month day of
November in the year AD 1861 there was ~~also~~
filed in said Court, ^{said} Demures to Defendants
amended plea which reads as follows. To wit,

State of Illinois	}	Yes	Joguin's County	Circuit	
Joguin's County					
				≠	Court Nov Term AD 1861
Alvin Harmon	}				
as					
Jarnell Munson					

and the said plaintiff says that the
said ~~party~~ ^{avowry} in the seventh amended plea of the said
defendant, and the matters and things therein pleaded

Harmon to
Jarnell Munson
Plea

are not sufficient in law, and this the said plaintiff is ready to verify wherefore he prays judgment &c

Kinney & Bowie & Fletcher
Plffs attys

joined in Decemur
Nov 29 1861 Joiner & Blades Chase & Paddock
attys for Defn

State of Illinois }
Jugenis County } ss.

Jugenis County Circuit Court
of the Nov Term AD 1861

Alvin Harmon
vs

Parnell Munson

And the said plaintiff saith that the said plea of the said defendant, and the matters ~~and~~ therein contained, in manner and form as the same are pleaded and set forth in the sixth amended plea, are not sufficient in law for the said defendant to avow or acknowledge the taking of the said goods, wares & merchandise in the said declaration mentioned, and he the said plaintiff, is not bound by law to answer the same and this he the said plaintiff is ready to verify, wherefore he prays judgment, and his damages by reason of the taking and unjustly detaining of the said goods, wares & merchandise to be adjudged to him &c

Kinney & Bowie & Fletcher

joined in Decemur
Nov 29 1861 Joiner & Blades & Chase & Paddock
attys for Defn

Plff Attorneys

and there was also filed in said Court on said
Twenty ninth day of November Replications to 374th
amended pleas which Reads in words ^{and} figures
following To wit:

State of Illinois }
Joguin's County } ss.

November Term of the Joguin's
Circuit Court AD 1861

Alvin Harmon }
vs }
Parnell Munson }

Rep to 3 Plea and the said plaintiff as to the amended
plea of the said defendant by him thirdly above pleaded
says (precludi non) because he says that the said
Parnell Munson said defendant at the said time when he
was not a deputy marshall of the United States in
and for the Northern District of Illinois, and was not
duly appointed and commissioned as such, nor did
he take & seize and obtain the goods wares, merchandize
and chattels in ~~in~~ said plaintiff's declaration mentioned
and as in said plea alleged by virtue of a Fieri Facias
issued out of and under the seal of the Circuit Court of
the United States in and for said Northern district
of the State of Illinois at the said time when &c
in favor of Eli Robinson George E. Royce Graham A Hard
Emery & Childs and Peter B. Acker against the said
John F. Wright for the sum of two thousand & ninety eight
dollars & thirty eight cents, and neither was said
Fieri Facias at the said time when &c delivered

to the said defendant as such deputy marshal to
 execute nor did the said defendant by virtue of
 his office as such deputy marshal or by virtue of
 said Fieri Facias on the said 10th day of July A.D. 1861
 levy upon said goods, wares, merchandise & chattels
 as the property of the said John F. Wright and the said
 plaintiff avers that said goods, wares, merchandise
 & ^{other} Chattels said time when &c were not in the possession
 of the said John F. Wright but were in the possession of
 the said plaintiff and the same were then & there the
 property of the said plaintiff and not the property of
 the said John F. Wright of which the said defendant
 had notice and of this the plaintiff puts himself upon
 the country

Kinney, Bowie, & Fletcher

Attys for Plff

and deft-doth the like
 former Bladon Chase &
 Paddock attys for Deft

Ref to 4 Plea

and the said plaintiff as to the plea of the said
 defendant by him forthly above pleaded, says
 precludi' now, because he says that said defendant
 at the said time when &c was not a deputy marshal
 of the United States for the Northern district of Illinois
 nor was he the said defendant duly appointed nor
 acting as such, nor was a Fieri Facias on the 10th
 day of July A.D. 1861 duly issued out of & under the seal
 of the Circuit Court of the United States in & for said
 northern district of Illinois in favor of Eli M. Robbins
 George E. Royce Graham A. Hord, Emory E. Childs, Peter
 B. Acker and against John F. Wright for the sum

of two thousand ninety eight dollars & thirty eight cents
nor did the said supposed Fieri Facias at the said
^{time} when &c come into the hands of the said defendant
as deputy Marshall to execute, nor did the said
defendant afterwards to wit on the said 11th day of July
A.D. 1861 by virtue of said office as deputy marshall as
aforesaid nor by virtue of said supposed Fieri Facias
aforesaid levy upon & take & detain the said goods,
wares, merchandise & chattels in said declaration
mentioned as the property of John F. Wright defendant
in said supposed Fieri Facias, and said plaintiff
avows that said goods, wares, merchandise & chattels
at the said time when &c were the property of the
said plaintiff and not the property of the said
John F. Wright as in said plea alleged and this
the plaintiff prays may be inquired of by the
country

Kinney & Bore & Fletcher
Plffs attys.

And the defendant doth the like
Joiner, Blades, Chase & Paddock
attys for Deft

and afterwards, to wit: on the Tenth day of December
in the year A.D. 1861. It being one of the regular days
of the said November term of said Court for the year
last aforesaid, & the said Court being then duly organized
and sitting in open Court for the transaction of business
the following proceedings were had & entered of Record by said
Court which reads in words & figures, To wit,

" Alvin Harrison }
 " 340 vs } Replevin
 " Parnell Munson }

" And now came the parties to this cause
 " the Plaintiff in person and by Kinney, Bowie, Fletcher ^{and} Kay his
 " attorneys ^{and} the defendant by Joiner, Blades, Chase ^{and} Paddock
 " his attorneys, and the issue between the said parties being
 " joined came the jurors of a jury to wit William Atkins,
 " Lewis W. Hunt, A. Conghenon, E. M. Sketo, J. H. Bishop, J. E.
 " Langlois, A. H. Torry, A. W. Beckett, O. W. Dean, Joel Brandenburg,
 " Joseph Myers, ^{and} Jacob Hummel twelve good and lawful men
 " who were then and there duly empaneled and sworn to well
 " and truly try this cause upon the issue joined according to the
 " evidence and after hearing a portion of the evidence upon
 " the adjournment of court in the evening are allowed to separate
 " and are by the court directed to Report to the Court for the
 " further hearing of this cause at the organization of Court
 " tomorrow morning.

and afterwards to sit on the Eleventh of December 1861 it being
 one of the regular days of the November Term of said Court for the year
 aforesaid and the said Court being then duly organized & sitting as
 aforesaid, ^{and} the following proceedings were had & entered of Record
 by the said Court To wit

" Alvin Harrison }
 " 340 vs } Replevin
 " Parnell Munson }

" The jury empaneled in this cause after

" hearing the remainder of the evidence in this cause and
" a part of the arguments of counsel, upon the
" adjournment of court in the evening are directed to
" separate and ordered to appear for the further hearing of this
" cause at the organization of court tomorrow morning,

and afterwards to sit on the 12th day of December¹⁸⁶¹ it being
one of the regular days of the November term of said Court
for the year aforesaid and the said Court being then duly organized
sitting as aforesaid the following proceedings were had and
entered of Record by said Court to wit

" Alvin Harrum }
" 340 as } Replevin
" Parrell Munson }

" The jury heretofore empanelled in this cause
" after hearing the evidence^{adduced} and the arguments of counsel and
" the instructions of the court retire in charge of an officer to consider
" of a verdict and afterwards return into court with the following
" verdict. We the jury find the defendant guilty and assess
" the Plaintiffs damages at one cent.

and afterwards to sit on the 13th day of said month December
in the year AD 1861 it being one of the regular days of the
November Term of said Court. for the year last aforesaid
and the said Court being then duly organized as aforesaid
the following were the proceedings entered of Record by
said Court which reads &c

" Alvin Harrum }
" 340 as } Replevin
" Parrell Munson } and now comes the defendant

" by Jones, Bladen, Chase & Paddock his attorneys and
" enters his motion to the court for a new trial in this cause
" and also in arrest of judgment.

and afterwards took on the Eighteenth^{day} of the month
of November in the year One thousand Eight Hundred and Sixty
Two the same being one of the regular days of the
November Term of the Progreso County Circuit Court
for the year A.D. 1862 and the said Court being then
duly organized and sitting in open court for the transaction
of business the following proceedings were had and entered
of Record by the said Court in the words & figures, To wit,

" Alvin Harrison }
" 340 os Replevin
" Parnell Munson }

" The motions by the defendant for a new trial
" and in arrest of the judgment of this Court entered in this
" cause at the November Term A.D. 1861 of this Court coming
" up for argument it is ordered by the Court that the said
" motions be overruled. It is therefore ordered by the Court
" that the Plaintiff do have and retain the possession of the
" property goods and chattels in controversy in this suit
" to wit: The entire stock of goods in the Store consisting of
" Boots & Shoes, dry goods, Crockery, Hats & Caps, glass ware, Groceries
" Yankee Notions, Looking glasses, Cutlery &c &c Also a quantity
" of Corn in the Building known as the old Tannery Building
" supposed to be Two Thousand Bushels & one set of Sarge Scales
" And two small Scales as his own absolute property forever,
" and it is further ordered that the Plaintiff do have

and recover of and from the defendant the said sum of
one cent damages together with his costs herein
expended and that he have execution therefor against
the said defendant, and now comes the defendant
by his attorneys and enters his exception to the
decision of the Court, and on motion it is ordered
that the defendant be allowed sixty days in which
to prepare and file a Bill of exceptions in this cause,

State of Illinois
Ingham County ss

I Thomas Dunning clerk of the Circuit Court ~~and~~ ~~Ex~~ in and for the said County in the State aforesaid do hereby certify that the above and foregoing is a true complete and perfect transcript of the proceedings of the Ingham County Circuit Court in said cause therein entitled wherein Alvin Warren is Plaintiff and Parnell Munson is defendant, as the same appears of Record and further that the same contains a true and literal copy of all the papers filed in said cause pertaining to or forming any part of the Record of said Court in said cause.

In attestation of which I hereunto set my name and the seal of said Court at Office in Middleport this first day of April AD 1863,

Thomas Dunning
Clerk



Supreme Court of the State of Illinois

Parnell Munson App in Error

v. s.

Alvin Harrison. App in Error

And there comes

the said Parnell Munson

App in Error by Haysen Smith & Davis his attorneys and
says there is manifest Error in the record & proceedings
aforesaid

1 The Court Erred in sustaining Plaintiff's answer
to the defendants fifth plea. -

2. The Court Erred in sustaining the Plaintiff's answer
to the defendants amended ^{first} 6th plea -

3 The Court Erred in sustaining Plaintiff's

4. The Court Erred in sending judgment for the Plaintiff
answer to defendants amended first 6th plea

Wherefore said Plaintiff in error prays that said judgments
may be reversed &c -

Haysen Smith & Davis

for said App in Error

State of Illinois } s. s. The Supreme Court
3^d Grand Division } April Term 1864

Parnell Munson

Plff in Error

vs
Alvin Harrison

Def't in Error

Indict in Error

And the said Alvin Harrison defendant in error now comes and says, that there is no error, either in the record and proceedings aforesaid, or in giving judgment aforesaid, in manner and form as above assigned; and therefore he prays that the said judgment may be affirmed and that his costs may be adjudged to him &c.

Chester Kinnier &
James Fletcher
For Def't in Error

Abstract of Title,

TO

To THO'S VENNUM, *Dr*
For making the within abstract of Title, \$-----
Received Payment,

TERMS CASH.

Culver, Page & Hoyne, Chicago.

~~#7~~ 57
Alvin Harroun
vs

Parnell Mounson

~~~~~

Record

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Filed April 22<sup>nd</sup> 1863

L. Leland  
Clerk