

12324

No. _____

Supreme Court of Illinois

Smith

vs.

Boyd

71641  7

~~30~~ 30

William G. Smith

vs

John H. Boyd

30

1857

12324

United States of America
State of Illinois

Now before the Hon Isaac
C. Wilson, Judge of the Thirteenth Judicial Circuit of the
State of Illinois; at a Term of the DeKalb County Circuit
Court begun and holden at the Court House in Sycamore
in said County on Monday September first in the Year
of our Lord one thousand eight hundred and fifty one

Present the Hon. Isaac C. Wilson Judge
Nehemiah Linnick Sheriff
Phineas H. Platt State Attorney
Attest M. M. Mack, Clerk.

Be it remembered that whereas heretofore
to wit; on the 3rd day of September A.D. 1857, the same
being one of the days of the said DeKalb County Circuit
Court of the September Term A.D. 1857 the following
Among other proceedings were had, and entered of
Record in books and figures following to wit

John S. Poye }

v

Attachment

William G. Smith }

This day comes the Plaintiff by Kreteinger his Attorney, and the Defendant being three times solemnly called, comes not, nor any one for him but makes default herein, which is ordered by the Court to enter of Record. It is therefore considered by the Court that the Plaintiff have judgment against the Defendant by default, and that a writ of inquiry issue herein to assess the Plaintiff's Damages.

And afterwards, to wit on the 1st day of March A.D. 1852, the same being one of the days of the said Gr. Kall County Circuit Court of the March Term A.D. 1852, among other proceedings the following were had, & entered of Record in words and figures following to wit:

John S. Poye }

v

Attachment

William G. Smith }

On Motion of the Plaintiff, it is ordered by the Court that the Default of last Term, entered herein be set aside, and leave given the Plaintiff to amend his Declaration

Afterwards to wit on the 6th day of March A.D. 1852, it being one of the days of the March Term A.D. 1852 of

the District Circuit Court aforesaid, among others, the following proceedings were had, and entries of Record in words and figures following to wit:

900 John W. Boyd
93 v Attachment
Jm G. Smith }

This day came the Plaintiff his Attorney, and the Defendant, being three times solemnly called, came not nor any person for him, but makes default herein, which is made of the Court, to be entries of Record, proof of Publication having been duly made: It is therefore concluded by the Court that the Plaintiff have judgment against the Defendant by default, and the Plaintiff damages being uncertain, and unknown to this Court, it is further ordered that a writ of Sequestrum issue herein to assess Plaintiff's damages.

And afterwards, to wit, on the 12th day of April A.D. 1853, the same being one of the days of the April Term A.D. 1853 of the District Circuit Court aforesaid the following, among other proceedings were had, and entries of Record, in words and figures following to wit:

1124 John W. Boyd
21 v Attachment
William G. Smith }

This day came the

Plaintiff by Agent his Attorney, and the writ of Habeas
hitherto issued pursuant to an order of this Court
having been returned & filed in the same, and it ap-
pearing to the Court by the return of said writ that
the jury empanelled in this cause before Joseph
T. Glendon, Sheriff of DeKalb County, on the Sixth
day of April A.D. 1853 upon their oaths do say
that the Defendant is justly indebted to the Plaintiff
in the sum of Eighty seven Dollars and thirty four cents
Debt, and the further sum of twelve Dollars and
thirty six cents damages for the detention of said
Debt, amounting in all to the sum of Ninety nine
Dollars and seventy cents. It is therefore consid-
ered by the Court that the Plaintiff have and
recover ~~from~~ the Defendant the said sum of Ninety
nine Dollars, and seventy cents, and costs herein
expended and have Special Execution therefor
against the lands herein attached, to wit: the South
West quarter of Section Nine, in Township Ninety nine
Range Four East of the Third Principal Meridian
lying and being in the County of DeKalb.

Copy of the Affidavit and Bond.

State of Illinois
DeKalb County of George W. Kretzinger, Agent and
Attorney of John McBoys, being
and sworn doth depose and say, that William C.

Smith is indebted to the said John M. Boyer, in a sum exceeding twenty Dollars, that the nature and amount of such indebtedness is a certain judgment recovered before Henry Gayles, a Justice of the Peace of the County of Washington, and State of New York November 26th 1850 by the said John M. Boyer, and against the said William G. Smith for the sum of Eighty seven dollars and thirty four cents damages and costs Debt, and the interest that has accrued on said judgment, as damages for the detention of the same - that ^{the} said Justice had jurisdiction of the subject matter of the suit in which said judgment was recovered, and of the person of the said Smith at the time said judgment was recovered, that the said William G. Smith is not a resident of this State but is a resident of White House in the State of New York as this affiant is informed and believes.

Subscribed and sworn to before me this 5th day of April 1851.

Geo. W. Kretzinger

M. M. Mack Clerk

Know all men by these presents that we George W. Kretzinger, as Principal, and John S. Brown as security are held and firmly bound unto William G. Smith in the sum of one hundred and eighty Dollars lawful money of the United States to be paid to the said William G. Smith his ex

cutors, administrators or assigns for which payment
well and truly to be made, we bind ourselves, we and
each of our heirs, executors and administrators
jointly and severally firmly by these presents.

Dated with our Seals, Data this fifth day of
April 1851.

The Condition of this obligation is such
that whereas the above bounden George W. Kretzinger
hath on the day of the date hereof prayed an Attach-
ment out of the Circuit Court of the County of Dist. Col.
at the suit of John M. Boya against the estate of
the above named William G. Smith for the sum
of Eighty seven dollars and thirty four cents being
the amount of the damages and costs of a certain judg-
ment recovered by the said John M. Boya, against
the said William G. Smith before Henry Gayton, a
Justice of the Peace, of the County of Washington, and
State of New York, on the twenty sixth day of No-
vember 1850, together with the interest that has ac-
crued upon said judgment as damages for the de-
lention of the same, - and the same being about
to be sued out of said Court, Returnable on the first
Monday in September next, to the Term of the
Court then to be holden, Now if the said John M.
Boya shall prosecute his suit with effect, or in case
of failure therein shall well and truly pay and
satisfy the said William G. Smith all such costs
in said suit, - and such damages as shall be

awarded against the John A. Boga his heirs
Executors or administrators in any suit or suits
which may be hereafter brought for wrongfully suing
out the said Attachment, then the above obligation
to be void otherwise to remain in full force and
effect.

Appraised April 5, 1851

George W. Kretzinger (Seal)

John S. Brown (Seal)

M. M. Mack Clerk

Tellur April 5th 1851. M. M. Mack Clerk

Copy of Writ of Attachment

State of Illinois

De Kalb County

Of the People of the State of Illinois to
the Sheriff of said County. Greeting

Whereas George W. Kretzinger, Agent and Attorney
for John A. Boga, hath complained on oath to
Martin M. Mack Clerk of the Circuit Court of the
County of De Kalb, that William G. Smith is justly
indebted to the said John A. Boga, in the sum of
Eighty seven dollars and thirty four cents Debt and
interest that has accrued thereon since Nov. 26th 1850
as damages for the detention of the same, and
oath having also been made that the said William
G. Smith resides out of this State, and the said George
W. Kretzinger, as agent and attorney for the said
John A. Boga, having given Bond and Security ac-
cording to the directions of the Act in such case

made and provided. We therefore command you
that you attach so much of the estate Real and
personal of the said William G. Smith to be found
in your County as shall be of value sufficient to sat-
isfy the said Debt, and costs according to the Com-
plaint, and such estate so attached in your
hands to secure, or so to provide that the same
may be liable to further proceedings thereupon
according to Law, at a Court to be holden at
the Court House in Sycamore, for the County of De-
Kalb, upon the first Monday of September next
so as to compel the said William G. Smith to
appear, and answer the Complaint of the said
John H. Boyd, when and where you shall make
known to the said Court how you have executed
this writ. And have you then and then this writ.

J. S.

Witness My hand M. Mack Clerk of
the Circuit Court of said County, and
the Seal thereof at Sycamore this 5th
day of April A.D. 1851

M. M. Mack Clerk

Copy of Officers Return returned in writ.

By virtue of the within I have levied on the
following tract and parcels of land to wit, Lying
and being in the County of DeKalb &c. the South
west quarter of Section nine, in Township thirty
Nine, Range four East of the Third Principal

Meridian

Fees for Sen. S. Certificate Page 25. Recording 25. Returning 10. \$ 61 0

McComan Turney

Sheriff of DeKalb County

By C. W. Paine Esq.

Given April 5th 1851 M. M. Mack Clerk

Copy of Order Publication

State of Illinois. DeKalb Co Circuit Court

John W. Poye

Sep. Term 1851

vs

Attachment

William G. Smith

Notice is hereby given to the said William G. Smith that a writ of Attachment issued out of the office of the Clerk of the Circuit Court of said County on the fifth day of April 1851 at the suit of ~~the~~ said John W. Poye, and against the said William G. Smith for the sum of Eighty seven dollars, and thirty four cents debt directed to the Sheriff of said County, which writ has been returned. Executed. Now, therefore unless you shall be and appear before the said Court on the first day of the next Term thereof to be holden at the Court House in Sycamore, in said County, on the first day of September next, give bail, and plead to said Plaintiff's action, judgment will be entered against you, and the property attached sold to satisfy the said debt and costs.

G. H. Kretzinger Esq. Atty. M. M. Mack Clerk
Given June 30. 1851

Copy of Certificate Attached to Notice Publication

I hereby Certify that the annexed Notice was published four successive weeks in the Kane County Democrat, a Weekly Newspaper published at St. Charles in Kane County & State of Illinois, commencing on the second day of July A.D. 1851, and ending on the 23^d day of the same month.

September 1st 1851. S. S. Jones Publisher
Publishers fee \$3.00

Filed Sept 5th 1851. M. M. Mack Clerk

Copy of Declaration

In the DeKalb County Circuit
Court of September Term 1851

State of Illinois

DeKalb County ss. John W. Doze, by George W.
Kretzinger his Attorney, Com

plaines of William G. Smith of a Plea that he owes
to him the sum of eighty seven dollars and thirty four cents
of lawful money of the United States which he owes to and
unjustly detains from him.

For that whereas the said Plaintiff, heretofore to wit
before Henry Gaynor, a Justice of the Peace, in the County of
Washington, in the State of New York, on the twenty fifth
day of March, in the year of our Lord one thousand eight
hundred & fifty then sitting as a Court to wit on the

Twenty fifth day of March 1850, in the County of Washing-
ton, and State of New York aforesaid. Recovery
against the said Defendant, as well the sum of eighty
five Dollars, and eighty five cents lawful money of the
United States for his damage which he had sustained
by the occasion of the non-performance of certain prom-
ises and undertakings before that time made by the
said Defendant to the said Plaintiff, as also the sum
of one dollar, and forty nine cents like lawful money of
the United States for his costs and charges by him about
his suit in that behalf expended to the said Plaintiff
by the said Court then and then adjudged, when the
said Defendant is convicted, which said judgment still
remains in that Court, on the Docket of the said Henry
Gaylord, Justice of the Peace in said County of Wash-
ington, and State of New York. And the said Plain-
tiff avers, that the said Henry Gaylord, Justice of the
Peace as aforesaid, at the time aforesaid, in the County
of Washington, and State of New York aforesaid by due
service of process, and according to the laws of the State
of New York had jurisdiction of the person of the
person of the said Defendant, and of the subject mat-
ter of said suit, upon which said judgment afore-
said was rendered at the time said judgment was
rendered, to wit on the twenty fifth day of March
in the year of our Lord, one thousand eight hundred
and fifty, at the County of Washington, in the said
State of New York. And the said Plaintiff in fact

said that he hath not obtained execution of the afore
said judgment, and that the damages, costs, and charges
aforesaid in form aforesaid recovered are of great value
to wit of the value of eighty seven dollars, and twenty
four cents of lawful money of the United States, to
wit at the County of DeKalb aforesaid whereby an
action hath accrued to the said plaintiffs to de-
mand and have of and from the said Defendant
the said sum of eighty seven dollars and thirty four
cents, the sum above demanded.

Yet the said Defendant, although often requested
so to do hath not as yet paid the the said sum of
Eighty seven dollars and thirty four cents above
demanded, or any part thereof to the said Plaintiff.

But to do thus hath hitherto wholly refused, and
still doth refuse, to the Damage of the said Plaintiff
of one hundred dollars, and therefore he brings suit to

Geo H. Kretzinger
Atty for Plff.

Filed Aug. 21, 1851. W. M. Mack Clerk.

Copy of Manuscript fragment

Justice Court }
Washington County } Before St. Gayles. Esq
John W. Boyer }
agst

William G. Smith } Special Summons November 18th

1850. Returnable on the 26th at one o'clock P.M. - Sum-
mons returned personally served November 20th 1850
J. Carpenter Const. fees 12 $\frac{1}{2}$ - November 26th 1850 St.
J. Bush appeared for Plff. and sworn to his Authority.
Def. did not appear - Plaintiff complains that
Def. on the 25th day of March 1850, by his two prom-
issory notes in writing for value Rec I promise to pay
James M^c Ghee, or bearer \$85.85 - one on the fifteenth
day of August next, and one on the fifteenth day of
June next, and that said notes has been transferred to
Plff. Plff demands judgment against Def. for
\$85.85 including interest on the same - see notes on
file marked A.B. Henry J. Bush was sworn as a
witness for Plff says that he has seen Def. write &
believe the signatures to the above described notes to be
his and his handwriting. Demands judgment against the
Def. for \$85.85. Damages and \$1.49 costs

Damages	\$85.85
Costs	<u>1.49</u>

1850 November 26th judgment \$87.34

Washington County p. I hereby certify that the
above is a transcript of a judgment rendered before
me in the above entitled cause that I have compared
it with the original, and that it is a true transcript
therefrom, and of the whole of such original.

Dated November 28th 1850.

Henry Gaylord Justice Peace

Filed Aug 21, 1851 M. M. Marks Clerk

Certified Copy of Transcript J. J. J.

Washington County Justice Court before N. Gaylord Justice
John D. Doye

against

William G. Smith

Spined Summons November 18th
1850. Returnable on the 26th instant

at one o'clock P.M. Summons was returned. Personally
served November 20th 1850 L. Carpenter Const. f 12 1/2.

November 26th 1850 Henry J. Bush appeared for Plain-
tiff, and sworn to his authority to appear. Defend-
ant did not appear. Plaintiff complains that
the Defendant on the 25 day of March 1850 by his
two promissory notes in writing for value received.
promised to pay James M. Chee or order \$85. 85 on
the fifteenth day of April next, and that said notes
belong to Plaintiff before this suit was commenced
Plaintiff demands judgment against the Defendant
for \$85. 85. including interest on the same.

Henry J. Bush was sworn as a witness for Plain-
tiff, and proved the execution of said notes. Witness
says I have seen the Defendant write, and believe
the signatures to the above mentioned notes in the hand
writing of the Defendant.

Rendered judgment against the Defendant for
\$85. 85. Damages

and

1. 49 Cents Costs

1850 November 26. Judgment \$ 87. 34

Copy of Writ of Inquiry issued, on which
no service is entered

State of Illinois
De Kalb County } The People of the State of
Illinois to the Sheriff of said
County Greeting;

Whereas such proceedings have been
had in the case of John D. Boga & William
G. Smith, that a Writ of Inquiry to assess
the Plaintiffs Damages herein;—

We therefore command you to sum-
mon twelve good and lawful men to form
a jury in said cause to assess the said
Damages as aforesaid. And Report to this
Court now in Session, at the Court now in
Session.

Witness Martin M. Mack Clerk
of said Court and the Seal thereof
L. S. at Sycamore this 6th day of July 1852
M M Mack Clerk

To return of office received
Filed Sept. 5, 1852. M M Mack Clerk

Washington County

I certify that the above is a
transcript from my Docket

Dated March 3^d 1853. Henry Gaylord
Justice of the Peace

State of New York.

Washington County, N.Y. I certify that Henry Gaylord
Esq. was on the 18th day of November 1850, and now
is a Justice of the Peace of said County, and duly qual-
ified to act as such, that I am well acquainted
with his hand writing, and truly believe his sig-
nature above to be his genuine signature.

Witness my hand and official Seal
this 4th day of March A.D. 1853.
J. C. Hitchcock

Dep. Clk

Filed April 6th 1853. J. S. Berens Clk

Copy of Writ of Inquiry, & Inquisition annexed
State of Illinois

DeKalb County of the People of the State of Illinois
to the Sheriff of said County. Greeting

Whereas such proceedings have been had in the
case of John S. Boga & William G. Smith, that
a writ of Inquiry to assess the Plaintiffs Dam-
ages herein has been ordered;

We therefore Command you to summon twelve
good and lawful men to form a jury in said

cause to assess the damages as aforesaid, and report
now in Session, at the Court now in Session

J.S.

Witness J^d W. Jennings Clerk of the
said Court, and the Seal thereof at
Sycamore this 6th day of April 1853
J^d W. Jennings Clerk

Copy of Officers Return on this.

The execution of this writ
appears in a certain Inquisition hereto annexed
to answers
Joseph F. Glendon
Sheriff
See Ex. 50. R. 10. pay fee 3.00. Paid by Plain

Copy of Inquisition.

State of Illinois ss. DeKalb County Circuit Court
John W. Pogue }

¹⁵
Wm. G. Smith } In Attachment

Inquisition returned and taken
at Sycamore in the County of DeKalb, the Sixth day
of April A.D. 1853. before Joseph F. Glendon Esq.
Sheriff of the County aforesaid, by virtue of a writ to
him directed, and to this Inquisition annexed to
inquire of certain matters in the same writ men-
tioned and contained by the oaths of Voluntas Patriarch
B. P. Brown, Thomas H. Wood, Thomas Woolsey, Robert
Robt. J. Decatur Love, Oliver P. White, Coleman
Melior, Levi Harsch Wm H. Cady, & Jonathan Remy

and the affirmation of John L. Cheastro for twelve
honest and lawful men of the County aforesaid
who upon their oaths and affirmation aforesaid
respectively do say, that William G. Smith, was on
the 26th day of November A.D. 1850 justly indebted
to John W. Poye in the said writ named in the sum
of Eighty seven dollars, and thirty four cents, and that
the said John W. Poye hath sustained damages
by occasion of the detention of the said debt to
twelve dollars and thirty six cents, — besides his
costs in this behalf expended.

In testimony whereof as well the said Sheriff
as the jurist aforesaid to this inquisition, have
set their hands and seals the day and year above said.

Joseph F. Glidden Sheriff Seal	
Thomas Patrick Seal	C. J. White Seal
B. P. Brown Seal	Colman Kellogg Seal
Thomas B. Wood Seal	Levi Brush Seal
Thomas Woolsey Seal	Wm H. Cady Seal
Robert Ross Seal	Jonathan Perry Seal
J. D. Love Seal	John L. Cheastro for Seal

Given April 12th 1853. J. W. Pennington Clerk

Copy of Execution
State of Illinois
DeKalb County of the People of the State of Illinois to
the Sheriff of said County Greeting.

We command you that of the following descen-
ed Lands and tenements Goods and Chattels of William
G. Smith, to wit: The NW 1/4 of Section Nine, Township 39
N. R. 4 East of 3^d P.M. Defendants in your County
you cause to be made the sum of Ninety Nine Dollars
and Seventy Cents, which John W. Boyer Plaintiff late-
ly in the Circuit Court of said County, at a Term thereof
begun and held at Sycamore in said County on the
fifth day of April last past recovered, against the
said Defendant, and which by the said Court was
awarded to the said Plaintiff for his Damages

And also the further sum of sixteen dollars and
forty five cents which were awarded to the said
Plaintiff for his costs and charges in that behalf
expended, whereof the said Defendant was commit-
ed, as appears to us of Record. And have you these
Monies ready to deliver to the said Plaintiff for
his Damages, and costs aforesaid, and make re-
turn of this writ with and endorsement thereon
in what manner you shall have executed the same
in ninety days from the date hereof.

Witness J. W. Boyer Clerk of our
said Court, and the Seal thereof at
Sycamore in said County this twenty
second day of April A.D. 1853

J. W. Boyer Clerk
Subscribed from April 15, 1853.

Copy of Return on Execution

April 25th 1853. By virtue of the within Execu-
tion I return on the Sth of Sec 9, S. 39, N. R. 4. Co

J. J. Glendon Sheriff

July 9th 1853. the above described land was sold to
Alexander M^c Ghee for \$123.42

J. J. Glendon Sheriff

Filed July 16th 1853 Justices of the Peace Clerk

Per C. J. Hunt Dep Clerk

Copy of Costs

Detall Circuit Court

John A. Boyer

April 1, 1853

v

Attachment

William G. Smith

Reffs Cost

Doc Suit Sep 2, 1851. 10, apprtatz 15, late offt Ser. cost & p 50

Trist Apr 40. Int def 20, 2 oras 20. 1 p 10. Court 20 B. C. 30. Doc suit

Mar. 2, 1852 10 apprtatz 15 and ser acim def 20, oras 20. Dec 20, Int def 20

Int Jan 25. or 20. Oct 2, 1852. doc 10, apprtatz 15. Trist Aug 30 B. C. 30

Rec Cost Sep 25. Not Pub 30, 1 p 5. Apr 2, 1853. doc 10, apprtatz 15 1 p 5

Trist Jan 1 p 40. Int def 20. Int Jan 25. doc Jan 10. oras 20. Ext filus

doc 10 B. C. 30. Cop 20, S. S. Int 25

Dep. Shff & Bame fee on Trist Attchⁿ

1.00

Shff Glendon " Singing

60

Jan fee.

3.00

Publisher's Fee

4.00

State of Illinois
DeKalb County J. James A. Beverage Clerk of
the Circuit Court in and for said
County in the State aforesaid do hereby certify that
the above and foregoing is a true and perfect
transcript of the proceedings had in the case of
John A. Boya vs William G. Smith, as above in-
titled - as the same appears of Record - and copies
of all papers now in the files in my office pertaining
to the same, including the Officers endorsements & the
filing of the same - ~~except a writ of Arguing issued~~
~~July 6th 1852 & return Sept 5, 1852 - in which there is no~~
~~endorsement or officers return~~

Witness my hand & the Seal of said Court at
Sycamore this 8th May A.D. 1855.

James A. Beverage Ckr

Per.

Manuscript 45 fol. 14^c 4.50

Cert & Seal 35 \$4.85

Erasmus in above Certificate made by me - the writ
therein referred to having been embodied in transcript

J. A. Beverage Ckr

John St Boyce

"

John G. Smith

"

Transcript.

In the Supreme Court
of the State of Illinois
William G. Smith
vs.
John H. Bryd

In the Third Grand
Division of the said
Court

State of Illinois }
Hane County }
}

Error from Le Gall
County Illinois.

William G. Smith the
plaintiff in error in the above entitled cause
being duly sworn according to the statute in
such case made & provided on his oath says
that he resides now at Warrenville in the county
of Du Page in the State of Illinois and that he is
a resident of said State. And the said
plaintiff in error also further says that the said
John H. Bryd the defendant in error is not
a resident of the said State of Illinois and that
no writ or process can be served upon him
issuing out of said Court but that the said
defendant in error resides at Whitehall
in the County of Washington and State of New
York — and further this affiant saith not.

William G. Smith

Sworn & subscribed to before me
this 16. day of July A. D. 1855.

J. Doaborn

Clk. of the Circuit Court
for Hann County

State of Illinois }
Hane County }
}

J. H. Maybaine

being first duly sworn doth
depose and say on oath, that he
is the attorney of the said William
G. Smith, and that he said May
have resided at Geneva in the
said County of Kenosha and State of
Illinois. And that he further
further saith that he is informed
and believeth the overture that
the said John W. Royce still
resides at Whitehall in the
County of Washington in the
State of New York as in said
affidavit of said John W. Royce
subscribed to
before me this 8. day of
March A.D. 1856

Luther Pearson Clerk of the Kenosha Cir. Court.

Supreme Court.
William G. Smith
vs.
John W. Royce.
Affidavit of the
Presidence of
Defendants

William E Smith
vs
John H Boyd

In the Supreme Court
of Illinois Third Grand
Division

Error to De Kalb Circuit Court

Assignment of errors ~~in~~ error

And now comes the said William E Smith
by his attorney and says that in the record of the
said proceedings manifest error hath intervened
to his prejudice and injury in this to wit:

1 The Affidavit upon which the writ
of Attachment issued is defective and
insufficient

2 The attachment writ is defective and
insufficient

3 The attachment Bond is defective and
insufficient and a nullity

4 The Declaration is defective faulty
insufficient and inartificially drawn
and no valid judgment could be
rendered upon it

5 There is a variance between the Judgment
Record set out in the declaration and the
one offered in evidence before the Jury or the
writ of Enquiry

6 The notice is insufficient and defective
as well as the proof of publication of the said
notice

- 7 Said Notice was not published a sufficient length of time
- 8 The writ of Enquiry was improperly issued and improperly Executed
- 9 The verdict rendered by the jury of inquest is defective and bad
- 10 The Court Erred in permitting the plaintiff to amend his declaration after taking Judgement by default without republishing
- 11 The Record is imperfect and insufficient and defective in the case
- 12 The Judgement record of the proceedings had and ~~returning~~ entering of Judgement before Henry Gaylord Esq. is defective and insufficient and is not properly Certified to or authenticated
- 13 It was improperly received in evidence by the Jury
- 14 The Jury Erred in rendering the verdict in favor of the defendant in error on the Evidence before them
- 15
The verdict was against law and evidence
- 16 The Jury received improper evidence
- 17 The record showing the final of the Judgement in this Case is defective and not in proper form

18 The Sheriffs Certificate of Sale endorsed on the back of the Execution is insufficient and defective

19 The said Court erred in rendering Judgment for the said Boyce when by the Law of the Land the said Judgment ought to have been for the said plaintiffs in error

20 And this said plaintiff error is ready to verify by the said record wherefore he prays Judgment of Record &c

J H Mayborn
for plaintiff in Error

Suprem ⁸⁷ ~~lower~~

³⁰
William G Smith
By

John H Boyd

~~Bill for~~
Green & of
Wirt of Green

Filed March 11, 1856

Leland Clerk

By J. B. Rice Deputy

General March 21 1856-

So Sir

Enclosed please find ~~me~~
~~some~~ \$12 to be applied for costs
in the case. I find also that the
Scribers had to sign ~~stagnant~~ to
to please put on our ~~by~~ ^{by} ~~way~~ ^{forfeiting} it way.

I wish to trouble you to look
over the writ of Error in the case
and see if there is a copy of the
Amended declaration, as there is -
now in the copy that I have, and
there is none ~~wrongful~~ in the books
of fine at York, as I have been
out there to see, still it strikes me
there ~~is~~ ^{is} a copy in that record
if so will you please copy it -
in the abstract made and here -
with such you, in the blank
left in No. 11, as then designated
and following by copying it in full
I must be long after the "records"

"For that that" as in No 11, and I
will pay you for your trouble
when I come down in June next.

I see by the 16 of the which is
just out that it is necessary to

Receipt of this letter and oblige
yours with Respect
To the Secy of the J. H. Maybom
Clerk of the
Third & Division of
the Supreme Court of
Ill. at Ottawa

P.S. There is 2000 Words in abstract
J. H. Maybom

Mr. Seale
Clerk

STATE OF ILLINOIS, }

Supreme Court, }

ss.

The People of the State of Illinois,

To the Sheriff of the County of De Kalb — Greeting:

BECAUSE in the record and proceedings, and also in the rendition of the judgment of a plea which was in the circuit court of De Kalb — county, before the Judge thereof, between John H. Boyd Plaintiff and William G. Smith —

Defendant, it is said that manifest error hath intervened, to the injury of the said William G. Smith —

as we are informed by his complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the state of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; therefore we command you, that by good and lawful men of your county, you give notice to the said John H. Boyd —

that he be and appear before the Justices of our said Supreme Court, at the next term of said court, to be holden at Ottawa, in said state, on the Second Monday in June next, to hear the records and proceedings aforesaid, and the errors assigned, if he shall see fit; and further to do and receive what said court shall order in this behalf; and have you then there the names of those by whom you shall give the said John H. Boyd —

notice, together with this writ.

WITNESS, the Hon. ~~Samuel H. Treat~~ Walter B. Scates, Ch. of Justice of our said Court, and the Seal thereof, at Ottawa, this 11th day of March in the Year of Our Lord One Thousand Eight Hundred and Fifty-six.

L. Seland
Clerk of the Supreme Court. Do
By J. B. Rice Deputy.

The within named John H Boyd -
not found in my Bailorwick therefore
I cannot Execute the within Writ or -
Commanded Dated ~~the~~ Governor March
the 19, AD 1856

Wm Phelps

Sheriff Geo S. Sheriff of De Kalb
Paid by Plaintiff in County State of Illinois
Clerk H G Smith

William G. Smith
vs
John H. Boyd.

Scire Facias

30

STATE OF ILLINOIS, }

WRIT OF ERROR.

Supreme Court, }

ss.

The People of the State of Illinois,

To the Clerk of the Circuit Court for the county of De Kalb Greeting:

BECAUSE in the record and proceedings, as also in the rendition of the judgment of a plea which was in the circuit court of De Kalb _____ county, before the Judge there-
of, between John H. Boyd _____

plaintiff, and William G. Smith _____

defendant it is said manifest error hath intervened, to the injury of the aforesaid William G. Smith _____

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

WITNESS, the Hon. ~~SAMUEL H. TRIM~~ ^{Walter B. Scates} Chief Justice
of our said Court, and the Seal thereof, at Ottawa, this 11th Day of March
in the Year of Our Lord One Thousand Eight Hundred and Fifty-Six.

L. Leland

Clerk of the Supreme Court.

By J. B. Rice Deputy

William⁵⁹ G. Smith
vs
John H. Boyd

Writ of Error

Filed March 11th 1886.

Leland Clerk.
By J. B. Rice Deputy

Supreme Court
William F Smith } Term of said Court
vs } For 1856
John H Boyd } For the Third grand Division
~~vs~~

Abstract of writ of error

1st The affidavit made by the agent G W Kertsinger of the defendant in error and upon which the attachment issued does not state sufficiently the amount and nature of the defendant's in errors claim or debt, it only "states that William F Smith
" is indebted to John H Boyd in a sum exceeding twenty
" dollars - that the nature and amount of said
" indebtedness is a certain Judgement recovered before
" Henry Gaylord a justice of the peace of the county
" of Washington and State of New York November 26
" 1850 by the said John H Boyd and against the said
" William F Smith for the sum of Eighty Seven ^{dollars} and thirty
" four cents damages and costs debt and interest that
" has accrued on said Judgement as damages for the
" detention of the same "

2 The attachment Bond is insufficient and defective in this it does not state the Residence of the obligors but states in these words, "Now all men by
" these presents that we George W Kertsinger as
" principall and John S Brown as security are held
" and firmly bound unto William F Smith in the
" sum of one hundred and eighty dollars lawful money,"

3 The conditional part of the said bond or obligation does not set fourth whether the said G W Kertsinger

31
prayed out the attachment as agent or attorney or that
he had any authority to do so from the said Boyel
but simply uses these words "The conditions of this obligation
" is such that whereas the above bonden George W. Kertsinger
" hath on the day of the date hereof prayed ~~out~~ an attachment
" out of the circuit court of the county of De Kalb at the suit
" of John H. Boyel against the estate of the above named William
" E. Smith for the sum of Eighty Seven dollars and ~~thirty~~
" thirty four cents being the amount of the damages and
" cost of a certain Judgement &c"

4 The attachment writ purports to have been issued in a case
where the said George W. Kertsinger as the agent and
attorney of the said John H. Boyel gave his bond - for it
refers to the bond in these words "And the said George W. Kertsinger
" as agent and attorney for the said John H. Boyel having
" given his bond and security according to the directions
" of the act in such case made and provided we therefore
" command that you attach so much of the estate Real and
" Personal of the said William E. Smith to be found in your
" county as shall be of value sufficient to satisfy the said debt
" and cost according to the complaint"

5 The declaration sets out and declares on a different record
than that referred to in the bond or affidavit or in the first
transcript of Judgement filed and states, "for that that
" whereas the said plaintiff heretofore to wit before Henry Gaylord
" a Justice of the Peace in the county of Washington in the State
" of New York on the ^{Twenty sixth} day of March in the year of our lord
" one thousand Eight Hundred and fifty then sitting as a
" Court &c and rendered against the said defendant
" The sum of Eighty five dollars and eighty five cents

"lawfull money of the United States for damages which he
"had sustained by occasion of the non performance of certain
"promises and undertakings before that time made by the
"said defendant to said plaintiff as also the sum of one
"dollar and forty nine cents like lawfull money of the United
"States for his cost and charges &c"

6 "Which said Judgement aforesaid was rendered at the time
"said Judgement was rendered - to wit on the twenty
"fifth day of March in the year of our lord one thousand
"eight hundred and fifty at the county of Washington in
"the State of New York"

7 The first transcript shewes that "I issued Summons
"November 18, 1850 returnable on the 26th at one o'clock
"P.M., - Summons returnable Personally, served November
"20 1850 L Carpenter Constable fees 12½ - November 26
"1850 H I Bush appeared for plaintiff and sworn to his authority
"- Defendant did not appear - Plaintiff complains that defendant
"on the 25 day of March 1850 by his two promissory notes in
"writing for value received ^{one} promises to pay to James
"McPhee or Bearer \$ 85, 85 - on the fifteenth day of
"August next, and one on the fifteenth day of June next
"and that said note has been transferred to plaintiff - plaintiff
"demands Judgement against defendant for \$ 85, 85.
"including interest on the same - see notes on file - Martree
"A. B. Henry, I Bush, was sworn as a witness for plaintiff
"- says that he has seen defendant write and believes the
"signature to the above described notes to be his, and his hand
"writings - Rendered Judgement against the defendant
"for eighty five dollars and eighty five cents damages
"and \$ 42 costs

Damages \$85, 85

Costs 1, 48
\$87, 34

1850 November 26 Judgement

11

Washington County, ff, I hereby certify that the above is a
transcript of a judgement rendered before me in the above
entitled cause that I have compared it with the original
and that it is a true transcript thereof and of the
whole of such original

Dated November 28 1850

Henry Gaylord

Justice of the Peace

8 Notice of Publication and Certificate: I hereby certify that
the annexed notice was published four successive weeks in
the Pine County Democrat a weekly paper published
at St Charles in Pine County and State of Illinois
commencing on the second day of July AD 1851 and
ending on the 23 day of the same month

September 1st 1851 S S Jones,

Publishers fees \$3.00 Publisher

Filed September 5 1851

M M Mack Clerk

9 John W Boyer

vs

to F Smith

Sept Term 5 1851

Attachment

" This day comes the plaintiff by
" Kertinger his attorney and the
" defendant being three times solemnly called comes not
" nor any one for him but makes default herein, which
" is ordered by the court to be entered of record it is
" therefore considered by the court that the plaintiff have
Judgement against the defendant by default and that a

" writ of Inquire issue herein to assess the plaintiff's damages "

Atty 10 De Kalb County Circuit Court

John H. Boyd

vs

William T. Smith

March Term

" AD 1852

" On Motion of the Plaintiff it is
" ordered by the court that the default of the last term entered
" herein be set aside and leave granted to plaintiff to
" amend his declaration "

" Amended Declaration filed

" For that

No 12 March 6 1852

"This day comes the plaintiff by his
"attorney and the defendant being three times called solemnly
"called comes not nor any person for him but makes
"default herein, which is ordered by the court to be entered of
"of Record - proof of publication having been duly made
"it is therefore considered by the court that the plaintiff have
"Judgment against the ^{defendant} plaintiff, by default; and the plaintiff's
"damages being uncertain and unknown to this court, it is
"further ordered that a writ of Inquiry issue to assess
"plaintiff's damages."

No 14 Copy of the second Judgment Record filed
April 6, 1853

"I issued Sommons November 18th 1850 returnable
"on the 26^{inst} instant at one o'clock P.M. Sommons was
"returned personally served November 26, 1850 L Carpenter
"Constable - fee 12 1/2 cents November 26, 1850 Henry T Bush
"appeared for plaintiff and swore to his authority to
"appear Defendant did not appear."

"Plaintiff complains that the defendant ^{on} of the 25th day of
"March 1850 by his two Promissory notes in writing for value
"received promised to pay James Mc Ehee an order
"\$85, 85 on the fifteenth day of April next and that said
"notes belonged to plaintiff before this Suit was commenced
"plaintiff demands Judgment against the defendant
"for \$85, 85 including interest on the same."

"Henry T Bush was sworn ^{as} a witness for
"plaintiff and proved the execution of said notes:
"Witness says I have seen the Defendant write and
"believe the signature to the above mentioned notes
"in the hand writing of the defendant."

"Rendered Judgment against the defendant for \$85,85-
" Damages and 1.49 cents Costs
" 1850 November 26 Judgment \$87,84 "

"Washington county, I certify that the above is a
"transcript from my Docket."

"Dated March 3^d 1853

"Henry Gaylord Justice of the Peace

"State of New York }
"Washington County } ss

"I certify that Henry Gaylord esq
was on the 18th day of November

"1850 and now is a Justice of the peace of said county
"and duly qualified to act as such that I am well
"acquainted with his hand writing and very believe
"his signature above to be his genuine signature "

"S, I, S, " Witness my hand and official Seal this
"4 day of March AD 1853 "

"P. C. Hitchcock Deputy Clerk "

"Filed April 6th 1853 "

"J. H. Beveridge Clerk "

"Nov 15 "Inquisition indented and taken at Sycamore in the
"County of De Kalb the sixth day of April AD 1853 before
"Joseph ~~Gibbs~~ Eldred esq Sheriff of the county aforesaid
"by virtue of a writ to him directed and this inquisition
"annexed to inquire of certain matters in the same
"as are mentioned and contained by the Oath of Holmes
"Patrick, B. P. Brown, Thomas H. Wood, Thomas Woolsey "

" Robert Robb, F Deature Gare, Oliver P White, Orlando Kellogg,
 " Live Harsh, Wm H Eddy and Jonathan Perry, and the affir-
 " -mation of John E Chescho Jan, Twelve Honest and Lawful
 " men of the County aforesaid who upon their oaths and
 " affirmation aforesaid respectfully do say, that William
 " E Smith was on the 21st day of November AD 1850 justly
 " indebted to John H Boyce in the said writ named in the sum
 " of Eighty seven dollars and Thirty four cents - and that
 " the said John H Boyce hath sustained damage by accision
 " of the detention of said debt to twelve dollars and thirty
 " six cents besides his costs in this behalf expended
 " In testimony whereof as well the said Sheriff as the Inquest
 " aforesaid to this Inquisition have set their hands and
 " Seals ~~the~~ the day and year above said

" Joseph F Eldredge Sheriff Seal	
" James Patrick seal	" O P White seal
" B P Brown seal	" Orlando Kellogg seal
" Thomas H Wood seal	" Live Harsh seal
" Thomas Wolsey seal	" Wm H Eddy seal
" Robert Robb seal	" Jonathan Perry seal
" F D Gare seal	" John E Chescho Jan seal

" Filed April 12 1853 J H Beavledge Clerk "

No. 16, " Final Judgement

" This day comes the plaintiff by ~~his~~ attorney Hunt
 " his attorney and the writ of Inquiries heretofore issued
 " pursuant to an order of this court having been returned
 " and filed in the same and it appearing to the court
 " by the Return of said writ that the jury empanelled in
 " this cause before Joseph F Eldredge Sheriff of De Kalb
 " county on the 8th day of April AD 1853 upon

" their ~~at~~ oaths do say that the defendant is justly
 " indebted to the plaintiff in the sum of Eighty-seven Dollars and
 " thirty-four cents Debt. and the further sum of twelve Dollars
 " and thirty-six cents damages for the detention of of said
 " debt. Amounting in all to the sum of ninety-nine dollars
 " and seventy cents, It is therefore commanded by the
 " Court that the plaintiff have and recover from the
 " defendant the said sum of ninety-nine dollars and seventy
 " cents herein expended and have special execution therefor
 " therefor against the lands herein attached, To wit the
 " south west quarter of section nine in township thirty
 " nine Range four East of the third principal
 " Meridian lying and being in the County of De Kalb "

J H Maybome J H Maybome
 Attorney for plaintiff
 in Error

59
 Superior Court

William G. Smith
 30 J. H. Maybome
 vs

John W. Boyd
 Deft in error

Abstract of
 Court of Errors
 in the above case
 taken care