

8551

No. _____

Supreme Court of Illinois

BOGGS

vs.

Rindshoff et al

71641  7

No 53 - 25

Nov. Term 1859.

Boggs

24

Kindersoph et al

Appl. from delay.

Rev. & Remond

1859

1
Was had before the Honorable
Alfred Kitchell Judge of the Twenty
fifth Judicial Circuit in the State of
Illinois, including the County of Clay in
said State, at a Term of Court begun
& held at the Court house in Louisville on
Monday the Thirtieth day of May in
the year of our Lord one thousand eight
hundred and fifty nine.

On the 22nd day of April A.D. 1858. the follow
ing affidavit & bond for costs & attachment
bond in the case of Roudshoff Brothers vs
Richard L. Boggs were filed in the office
of the Clerk of the Clay Circuit Court
to wit;

Of the May Term of the Clay Circuit
Court for the year 1858

Roudshoff Brothers &

vs

Attachment

Richard L. Boggs

Charles C. Lockard a

Affidavit

member of the firm of Roudshoff Brothers
(which firm is composed of affiant, Adolph
Roudshoff, Raphael Buckman, Thomas &
Ireland, Joseph Zeiler, Minis Roudshoff &
Simcon Roudshoff, doing business as partners
under the name style & firm aforesaid, first
being duly sworn according to law does

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depose and say that Richard S. Boggs, Mer-
chant of the County of Clay aforesaid is justly
indebted to the said firm in the sum of nine-
teen hundred and ninety seven dollars and
seventy six cents, that the said amount con-
sists of an open book amount though adjusted
of nineteen hundred and eighty seven dollars
and seventy six cents and interest due thereon
at the rate of six percent per annum from the
26 of March 1868, that the said principal
sum and interest due thereon now amount
to the sum of nineteen hundred and ninety
seven dollars and seventy six cents, that
the same is now due and payable as aforesaid
to the said plaintiffs. And further affiant says
that the said Richard S. Boggs defendant
herein now conceals himself, & evades the offi-
cers, so that the ordinary process of the law
cannot be had or served upon him, that this
affidavit is made to lay the foundation
of attachment against the goods and effects
of the said Richard S. Boggs defendant
herein. And further more affiant says
not

Charles C. Larkard
Sworn to and subscribed
before me this 21st day of
April 1868.

Wm. J. Martin J.P.
on the back of which affidavit is the

following "Filed April 22^d 1858"

"J. P. Hingate clerk"

Roudskoff Bros & Co^y

Bond for
hearts

vs

May term 1858

Richard L. Bagg

Circuit Court delaying

I do hereby enter myself security for costs in this
cause and acknowledge myself bound to pay
or cause to be paid all costs, which may accrue
in this action either to the opposite party or to
any of the officers of this court in pursuance
of the laws of this state. April the 22^d 1858.

James Morrill

Witness "Filed April 22^d 1858"

"J. P. Hingate"

Of the May term of the delay County Circuit
Court for the year 1858

Know all men by these presents that we
Mathew & Joseph Roudskoff, Raphael Pinkman
and Thomas Ireland, Charles O. Lockard, Morris
Roudskoff, Simon Roudskoff and Joseph
Zeidler and W. E. McMaskin are held and
firmly bound unto Richard L. Bagg in the
penal sum of four thousand dollars, lawful
money of the United States for the payment
of which well and truly to be made we bind
ourselves, our heirs, executors, administrators and
assigns jointly and severally and firmly
by these presents. Witness our hands and seals
this twenty first day of April A.D. Eighteen

hundred and fifty eight (1858)

The condition of this obligation is such that
 whereas the above bounden Adolph Rindskopf,
 Raphael Birnman, Thomas S. Ireland, Charles
 O. Lockard, Morris Rindskopf, Joseph Zeiler
 and Simon Rindskopf under the firm
 name and style of Rindskopf Bros and Co
 have on the day of the date hereof prayed an
 attachment, out of the circuit court of the
 county of Clay and state of Illinois, at
 the suit of the said firm against the
 estate of the above named Richard S. Boggs
 for the sum of nineteen hundred and sixty
 seven dollars and seventy six cents, and
 the same being about to be sued out of
 said court, returnable on the third day
 of May next, to the term of the court then
 to be holden, now if the said Rindskopf
 Bros and Co. shall prosecute their suit
 with effect, or in case of failure therein
 shall well and truly pay and satisfy
 the said Richard S. Boggs, all such costs
 in said suit, and such damages as shall
 be awarded against the said Rindskopf
 Bros and Co. their heirs, executors or ad-
 ministrators, in any suit or suits, which
 may hereafter be brought for wrongfully
 suing out said attachment, then the
 above obligation to be void, otherwise

to remain in full force and virtue and
effect.

Adolph Rindskopf ^{Real}
Raphael Bruckman ^{Real}
Chas O Lockard ^{Real}
Thos J. Ireland ^{Real}
Chas C. Lockard ^{Real}
Morris Rindskopf ^{Real}
Simon Rindskopf ^{Real}
W E McMachin ^{Real}

which bond is marked

"Filed April 22^d 1858

J. P. Hengate
Clerk

State of Illinois & S.C.
Clay County &

Writ of
Attachment

The People of the state of Illinois
to the Sheriff of said county. I acting
Whereas Charles C. Lockard hath
complained on oath to J. P. Hengate
Clerk of the circuit court of Clay
County that Richard L. Boggs is
justly indebted to the said Adolph
Rindskopf, Raphael Bruckman, Tho-
mas J. Ireland, Joseph Geiler, Morris Rin-
dskopf & Simon Rindskopf & Charles
C. Lockard, a firm doing business under
the name & style of Rindskopf Bros & Co
to the amount of nineteen hundred
and ninety seven dollars and seventy

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six cents and oath having also been
made that the said Richard L. Propps, so
conceals and evades the officers that the
ordinary process of the law cannot be
had or service upon him, and that
they have no means of collecting said
debt but by process of attachment
and the said Bondskoff Bros & Co
having given bond and security
according to the act in such case
made and provided. We therefore
command you that you attach
so much of the Estate, real and per-
sonal, of the said Richard L. Propps
to be found in your county, as
shall be of value sufficient to satis-
fy the said debt and costs, accord-
ing to the complaint. And such estate
so attached in your hands to secure
or so to provide that the same may be
liable to further proceedings thereupon
according to law at a court to be
held at Springfield for the county
of Clay and state of Illinois upon
the first Monday of May next, so
as to compel the said Richard L. Propps
to appear and answer the complaint
of the said Bondskoff Bros & Co

Witness J. P. Hengate of our

C. L. B.
Said Court at Louisville this
22^d day of April A.D.
1858. and the Judicial Seal of
said Court being hereto at-
tached. J. P. Hingate Clerk

Levy of
Writ I have this 22^d day of April 1858 levied
the within attachment No 5 B 20 in
South Decatur Clay County Illinois and
the store house and contents situated on
lot aforesaid, the store to continue in
the possession of Joseph Wilson by order
of the plaintiffs til Saturday 24th inst and
til three o'clock on said day. Also levied on
Ware house and contents situated on lot
No aforesaid subject on same order as
the store - all being the property of the said
defendant, and more particularly des-
cribed by a catalogue of the articles of
property or merchandise in said house
herewith returned as an exemplification
and part of this levy and return thereof

Henry Phelps Sheriff

By B. G. Reynolds Deputy

Service Served this writ on the within nam-
ed R. L. Bagg by reading the same
to him this April 24th 1858

Henry Phelps Sheriff

By B. G. Reynolds Deputy

Shiffs fees
Levy 50
Writ 60
Returning 200
2 levies 100
Total 410

of the May Term of the circuit
 court Clay County Ills
 for the year 1888.

Rindskopf Bros & Co

vs

{ Assumpsit

Richard L. Baggs

{ Damages \$2000.

Declaration Richard L. Baggs of the County of Clay
 and State of Illinois was attached to
 answer Adolph Rindskopf, Raphael
 Buckman Thomas Ireland, Joseph
 Geiler, Charles O. Lockard, Morris Rindskopf
 and Simon Rindskopf doing business
 under the style and firm Rindskopf
 Bros & Co of a plea of trespass on
 the case or promises, whereupon the
 said Rindskopf Bros & Co by S. L. Bryan
 and M. Schaeffer their attorneys complain
 that whereas the aforesaid Richard
 L. Baggs on the 26th day of March A.D.
 1888 at Cincinnati to wit, at the County
 of Clay aforesaid was indebted to the
 said Rindskopf Bros & Co in the sum
 of nineteen hundred and eighty seven
 dollars and seventy six cents lawful
 money of the United States for divers
 goods, wares and merchandise by the
 said Rindskopf Bros & Co to the said
 Richard L. Baggs, at the Special instance
 and request of the said Baggs before

that time sold and delivered, and being so indebted, the aforesaid Richard L. Boggs, in consideration thereof afterwards, to wit; the day and year aforesaid at the County aforesaid upon himself did assume and unto the said Rindskopf Bros & Co then and there faithfully promised, that he the said Richard L. Boggs the aforesaid sum of nineteen hundred and eighty seven dollars and seventy six cents unto the said Rindskopf Bros & Co when there afterwards he should be requested, would well and truly pay and Content. And whereas also the said defendant afterwards to wit; on the day and year aforesaid at &c aforesaid was indebted to the said plaintiffs in the further sum of two thousand dollars for money found to be due from the said defendants to the said plaintiffs upon an account then stated between them and in consideration thereof then and there faithfully promised the said plaintiffs to pay them the said plaintiffs the said sum of two thousand dollars upon demand. Nevertheless the aforesaid Richard L. Boggs his said several promises and assumptions not regarding but contriving

and fraudulently intending the said
 Bindskopf Bros & Co. in this behalf era-
 ptly and subtly to receive and de-
 fraud, the said several sums of money
 or any part thereof unto the said Kin-
 dskopf Bros & Co yet both not paid altho-
 ugh often requested so to do; but the said
 to them to pay hitherto both wholly neglect-
 ed and refused and still doth neglect
 and refuse to the damage of the said
 plaintiffs of two thousand five hundred
 dollars and therefore they bring suit
 &c.

By on & Schaffer Attys
 for Plffs.

1858 Richard L. Boggs to Bindskopf
 Bros & Co Dr

March 26 To amt of goods sold & delivered \$1987.76

" " " found due on a/c stated & other 3987.76

"¹² Filed April the 22^d 1858.

J. P. Hengate clerk

At the May term A. D. 1858 of the
 Relay Circuit court held at the court
 house in Louisville on the first
 Monday of May A. D. 1859. The Hon-
 orable Justin Mearns on the Bench
 the following order was made.

Roudschoff Bros & Co

vs

Attachment

1st
Order

Richard L. Boggs

Now on this day

It is ordered by the court that this cause
be continued &c

At the October Term A.D. 1858, of the
Clay Circuit Court held at the court
house in Louisville on the first Mon-
day of October A.D. 1858. On the bench
the Honorable Justice Healdan the
following order & proceedings were had
to wit

Roudschoff Bros & Co

vs

Attachment

Richard L. Boggs

Now on this day upon

2d
Order

motion of plaintiff attorney, it is ordered
by the court that defendant be required to
plead to plaintiff declaration &c. by the call-
ing of the court on Thursday, and there
being no further proceedings had herein
It is ordered that said cause be contin-
ued until said time &c.

Roudschoff Bros & Co

Clay Circuit Court

vs

October Term A.D. 1858

R. L. Boggs

Plea in abatement

Plea

and the said defendant in his

on proper person comes and depends &c. and
 prays judgment of the plaintiff to wit; Bec-
 cause he says that he the said defendant did
 not conceal himself and evades the officers
 so that the ordinary process of the law could
 not be had or served upon him as alleged
 in the plaintiff's affidavit & writ, and of
 this the defendant puts himself upon the ca-
 vety and prays that the plaintiff writ, be
 quashed &c. Richard L. Boggs

And the said plaintiff does the same

Ryan & My for Pat

State of Illinois & p

Clay County & Richard L. Boggs being
 being first duly sworn says that the matters
 & facts alleged in the above plea are true in
 fact & substance. Richard L. Boggs

Subscribed and sworn to in open court
 Oct 7th 1858. J. P. Hengate Clerk

Marked. "Filed October 4th 1858"

J. P. Hengate Clerk"

Rindskoff Bros & Co

vs

& Attachment

Richard L. Boggs &

On this last day of

the Term. It is ordered by the court that
 this cause be continued &c.

On the 8th day of October 1858 The Sheriff
filed in the office of the Clerk of the Circuit
Court a delivery bond in the words &
figures following to wit;

Delivery
Bond

Know all men by these presents, that we
R. L. Baggs, David Might Jr. & William
Shaffer are held and firmly bound unto
Henry Phelps, Sheriff of Clay County in the
penal sum of four thousand dollars
for the payment of which well and truly
to be made, we bind our heirs executors
and assigns, jointly, severally and firmly
by these presents, witness our hands & seal
this the 24th day of May A.D. 1858.

The condition of the above obligation is
such, that the said Henry Phelps Sheriff
as aforesaid by virtue of a writ of Attach-
ment, sued out of the circuit court of
Clay County, wherein Reed Hoff Bros & Co
are plaintiffs and R. L. Baggs is
defendant, hath levied upon the follow-
ing personal property as the property of the
said defendant (to wit) Boots 96 pair
mens & boys shoes 142 pair, women, & child-
rens 462 pair vests 47, pants 46 pair,
Coats 105, Shirts 31, blankets 17, pair, one sack
of coffee, 3 cross saws & 1 buck saw, eight
grain sythes, six pitchforks & one spade,

4 Shavels, hats 55, 9 pair of hames, cotton
 goods 24 pieces, woollen goods 9 pieces, silk
 fringe 8 pieces Do cotton 2 P one piece
 of green vail, lawn 5 pieces, book mus-
 lin 5 pieces crop bared y aonet 3 P
 pocket handkerchieves 2 hats, prints 14
 pieces Do 11 P Lawn 10 " , jaws 2 " cotton
 drilling 2 " Summer stuff 2 " apron
 Check 2 " Check linen 2 " silk 76 Kps
 4 hats cotton 3 " suspenders 1 doz, agate
 buttons 5 gross, prints 21 pieces. Now if the
 above householden collition are not com-
 plied with then the aforesaid defendant
 shall have the above named property at
 the Court-house in Louisville in said
 County on the day of A.D. 1858
 to answer the judgment on said writ
 of attachment to deliver the same to the
 said Henry Phelps Sheriff as aforesaid
 or his successor in office, the above bond
 to be void otherwise of full force and
 effect
 Witnesses
 John A. Dalgas
 R. D. S. Wilson.

R. L. Baggs ^{Wm} Seal
 William Macpherson ^{Wm} Seal
 David Wright ^{Wm} Seal

On the 15th day of November
 1858 the plaintiffs attorney filed in the
 Affidavit Clerk's office an affidavit preparatory
 to taking depositions in the words

following, to wit;

Of the May Term of the Circuit Court for 1858

Bondshoff Bros & Co.

vs

Attachment

Richard L. Rogers

Silas L. Bryan the Atty
of the plaintiffs in the above entitled cause
first being duly sworn according to
law does depose and say that John
Gonsdale, Joseph Wilson, Robert G.
Levy and James K. Daniel are mater-
ial witnesses as he believes for the
plaintiffs, in the trial of the above
cause and that said witnesses are at
this time citizens of the county of
Wayne and state of Illinois, that this
affidavit is made for the purpose of
taking the depositions, of the said
witnesses to be read as evidence on the
trial of said cause in behalf of the
plaintiffs, and that said witnesses are
citizens as aforesaid according to the said
belief of affiant and further this affiant
says not

Silas L. Bryan

Atty for Pfts

Subscribed and sworn to before me
November 12. 1858. In testimony whereof
I have hereunto set my name and of

fixed the official seal of the supreme court
of the state of Illinois at Mount Vernon
this day and date

Noah Johnston Clerk

Supreme court 1st Grand Jurisdiction

" Marked filed November the 15th 1858

J. P. Hingate Clerk

On the 2nd day of November 1858 the sheriff
of the county of Clay filed in the office of the
clerk of the clay circuit court the following
delivery bond, to wit;

Delivery
Bond

Know all men by these presents that we
Richard S. Boggs, David Wright and Milton
arr Shaffer are held and firmly bound
unto Henry Phelps sheriff and for the Co-
unity of Clay & State of Illinois, in the penal
sum of four thousand dollars for the payment
of which well and truly to be paid, we bind our-
selves, our heirs, executors or administrators and as
signs, jointly, severally and firmly by these pre-
sents, as witness, our hands & seals, this 2nd day
of November A.D. 1858, the condition of
the above obligation is such that whereas
the said Henry Phelps as sheriff as aforesaid
by virtue of a writ of attachment from the cir-
cuit court of Clay County at the suit of
Houshopp, Bros & Co against the estate of
the said Richard S. Boggs, has levied upon

the following personal property to wit; 96
pair Boots (mens) 192 pair of boys shoes 462 pair of
Womens shoes, 47 vests 46 pr. pants, 105 Coats
31 shirts 17 pair blankets 1 sack of coffee, 3
crop cut saws, 1 buck saw & grain scythes
6 pitch forks, 7 spades & shovels 55 hats, 9 pair
of hames, 24 lbs cotton goods 24 pr woollen
goods 9 pieces of silk fringe, 8 pieces of cotton
fringe, One piece of green veil, 5 pieces of
lawn, 5 pieces of book muslin, 5 pieces of
crop bared yacout, 3 pieces of pocket handkerchiefs,
2 bolts of prints, 14 pieces of prints
10 pieces of lawns, 2 pieces of Cotton drilling
2 pieces of summer stuff, 2 pieces of apron
check, 2 pieces of Check linen, 2 pieces of
silk handkerchiefs, 4 bolts of cotton, 3 pair
of suspenders, 1 doz agate buttons 3 gross pri-
nts 21 pieces, and whereas also the said Rich-
ard L. Boggs is desirous of retaining said
property, until such time as the same shall
be demanded, by said sheriff in satisfaction
of any judgment the said plaintiff may
recover, in said suit against the said
Richard L. Boggs. Now if the said L. Boggs
shall well and truly deliver the said property
to the said sheriff, when the same shall be
demanded as aforesaid, then this obligation
shall be void, otherwise to remain in full
force and virtue.

R. L. Baggs (seal)
 William Shaffer (seal)
 David Wright (seal)

"Filed November the 27th 1858.

J. D. Hingate clerk

At the May term A.D. 1859 held at the
 court house in Louisville on the
 fifth Monday of May A.D. 1859. the
 Honorable Alfred Kitchell on the bench
 the following proceedings were had on
 the fourth day of said term.

Roushoff Bros & Co.

43

vs

Richard L. Baggs

} Attachment

Now on this day comes

the defendant by his attorneys Brown & Green
 and moves the court for a rule, requiring the plain-
 tiff to produce a power of attorney authorizing the
 signing of plaintiff's names to the attachment bond
 in this case, which motion after hearing argu-
 ment by counsel of defendant as well as that
 of plaintiff, is by the court overruled, and by
 agreement of parties this case is set down for
 trial on Tuesday morning, the eighth day
 of the term &c.

Rondshoff, Brothers & Co.

vs

Attachment

Richard L. Baggs

And now on this
eighth day of the term came the said parties
and issue being joined upon the plea of
abatement of the defendant to the plaintiffs affi-
davit, thereupon comes a jury to wit, J. B. Gillman
John Ditter, W. W. Apperson, M. H. Presley, John Little-
ton, John Kellums, Edward Gander, S. J. Moore, J. H.
Campbell, John A. Martin, Allen Sandrette,
Farling Long, twelve good and lawful men,
who being duly elected tried and sworn, to hear
and determine the issue joined, after evidence
and argument had, retired to consider of their
verdict, and it being evening, by consent of
parties, the jury before retiring were instructed
that agreeing upon their verdict, signing &
sealing and delivering the same to their officer
they should be at liberty to separate & thereupon
the court adjourned, until tomorrow morn-
ing 8 o'clock.

Rondshoff Brothers & Co.

vs

Attachment

Richard L. Baggs

Now at this the 9th
day of said term, came the said parties and the
verdict of the jury, in this cause, in the hands

of the officer sealed & being delivered into court and by consent of parties opened and received. as the verdict of the jury, without the call of the jury, and the verdict being so opened and received, the verdict of the jury was and is, that we the jury find for the plaintiff, and thereupon the said defendant having filed no further plea, but being called same not nor makes further defence. Whereupon it is considered and adjudged by the court, that the said defendant be considered in default and that plaintiff have judgment against said defendant for the amount of their said damages and it being uncertain what those damages are. It is ordered that a jury be called & thereupon comes a jury to wit, Alfred J. Moore, M. H. Pusley, M. H. Davis, Allen Landreth, S. B. Gilliam, Wesley Golden, Benjamin Jones, Edward Gencer, John Kellams, Harrison Ingraham, W. J. Martin & A. S. Lincey, twelve good and lawful men who being duly elected tried and sworn to well & truly enquire into and ascertain plaintiffs ^{expenses} ~~expenses~~ after hearing evidence upon their oaths do say we the jury find for the plaintiff the sum of Twenty one hundred and twenty & $\frac{93}{100}$ dollars. Whereupon it is further considered & adjudged by the court, that the said plaintiffs have and recover of and from the said defendant the said sum of twenty one

hundred and twenty and $\frac{23}{100}$ dollars together
with their costs herein about their suit
expended and that they have execution
against the property attached &c.

On the 7th day of June A. D. 1839, the following
Bill of Exceptions was filed in the said Clerk's
office in said cause, viz:

"Be it remembered that on this Tuesday
the 7th day of June, the same being the 8th
day of the May Term of Clay Circuit Court
1839, this case came on to be heard (tried).

'Rindskopf, Bro. & Co.

vs.

Attachment.

R. L. Boggs

And this case being
heard before Hon. A. Kitchell & a jury. The
Plff. introduced as a witness Henry Phelps,
who being of lawful age & duly sworn, was
asked by Plff. the following, "Did you as
Sheriff of Clay County during the month
of April 1838, & about the time of serving
out this writ attachment have a process
against D^r. Boggs the acct. for service
in this county?" To which the s^d. witness
answered he had a process sent to me from
the Clerk of Wayne County against D^r. Boggs.
The man who brought it purported to be
the deputy Sheriff of Wayne C^y. Ills. The

man was R. J. Coe. the process was directed to me, I took it & made a search for Dr. Boggs. I went to Barria & into the his store & did not find him." To the asking which question & the answer of same the Deft. by his counsel then & then excepted, & the court overruling such exception permitted such answer to go to the jury, & the Deft. tendered this Bill of Exceptions and asked that same be signed & sealed & made a part of the record which is done.

A. Kitchell (Seal)"

And afterwards, on the 8th day of June A.D. 1859, the following bill of Exceptions was filed in the said Clerk's office, viz;

"State of Illinois, Clay County. Be it remembered, That on Tuesday the eighth day of the Circuit Court of the County of Clay & State aforesaid, & of the May Term 1859 of said Court, the following came to wit.

Adolph Rindkoff & al under the names Style of Rindkoff Bros. & Co.

vs.

Richard L. Boggs.

Attachment

came on to be heard before the Hon. A.

Kitchell, judge & a jury, and the defendant having heretofore filed his plea in abatement in this cause & issue being joined thereon in the words & figures following.

Reinickhoff, Prob. Sec.	}	City Circuit Court.
vs.		October Term A.D. 1858.
R. L. Boggs		Plea in abatement.

And the said defendant in his own proper person comes and appears &c. and prays judgment of the Plaintiffs writ, because he says that he the said defendant did not conceal himself and evades the officers so that the ordinary process of the law could not be had or served upon him as alleged in the Plaintiffs affidavit & writ. And of this the defendant puts himself upon the country, and prays that the plaintiffs writ may be quashed &c.

Richard L. Boggs.

And the said Plaintiffs doth likewise.

By an. City J. P. Poff.

State of Illinois.

City County }

ss. Richard L. Boggs being first duly sworn says that the matters & facts alleged in the above plea are true in fact and substance. Richard L. Boggs.

Subscribed and sworn to in open Court Oct. 7th. 1858. J. P. Heriyale, Clerk."

attachment on him on Friday or Saturday. The return shows the day. (The schedule of Articles levied on, in Phelps writing, admitted by consent, said schedule being on file). This was all said witness testimony.

Stephen Shurley a witness of lawful age being sworn by Plffs. who states - That he heard Boggs the Deft. this spring one year ago, about this time of the attachment say, speaking of Hibbard, that he deft. had written to Hibbard to come to Fairfield. I do not know that I heard Dr. Boggs say any thing about getting process. I understood him to speak of the Hibbard debt, & said they were trying to break him up, and that he would bet they could not get a judgment in two years if he would make a fight, & this was all his testimony.

Thos. H. Loomy, a witness ^{sworn for the Plffs} of lawful age appears and says as follows, That he had a conversation with Deft. last spring a year ago about the time he had a difficulty in Wayne County about his money matters. This conversation was at Blue Point in Wayne County. The conversation was principally about the business of Hibbard & that he did not care if they did get him in Wayne County - That Trousdale could not get a judgment against him in 3 years,

but he did not wish to be molested in Clay county, or to have his business there disturbed. Deft. resides & did reside at that time in Wayne County - has a family in Fairfield Wayne county; & did business at Blue Point in Wayne co. when this conversation took place, and this was all the testimony of said witness.

Isaiah Hoskinson a witness for Plff. produced and sworn deposes & says. He knows the deft. and knew him in April 1838. I saw him frequently in Henia, - after process had been served on him in Wayne Co. Saw deft. in Henia and had a general talk with deft, and laughed at him about having been sued and served in Wayne county. I only speak from general recollection. This was on Sunday before the attachment in this cause was issued. I did not see Boggs after that Sunday until the next Saturday. Boggs had a business house at Henia, and at Blue Point in Wayne County. He said they had been serving process on deft. in Wayne and I laughed at him about it when he said he did not care a damn how much they served process on him in Wayne, but they should not have served on him in Clay County. I was laughing about the writs that had been sent from

Wayne up here to be served on him the talk was about the Wayne Co. suits. This conversation with Boggs was on the Sunday week before the Wayne Circuit Court. & this was all his testimony.

Plff. then introduced John Ebelin of lawful age who being sworn says. He knows the deft. has seen him three or four times - he was at witness house little over one year ago & this was on Sunday evening - he staid over night - next morning went to Green Dale. - witness resides in Marion County about 4 miles from Henia - he (the deft.) on Monday morning wrote some letters at witness stn. I tried to flag the freight train for deft. on Monday morning but it did not stop and I flagged the passenger train & stopped it for him and he got on. Glendale is in Marion County - the deft. came then on horse back rode his horse to Glendale - from there I took the deft. horse to my house where the horse remained until Saturday following when a boy came for him. Boggs was in Glendale on Saturday last before he got on cars at Green Dale as before stated. He said he was going to Springfield to see Sawyer Logan - that he had some goods attached at Vincennes. Boggs while there succeeded to buy 80 acres of land, and directed me

if I could make the trade to put the horse of capt. in. When boy came for horse he brought a letter from Boggs asking if witness had made the trade for horse. That capt. had not been, so far as witness knows, at Greendale, since taking the cars there until last Saturday. That witness did not know for what purpose capt. came to Greendale on the Sunday referred to.

Mrs. Summers a witness called & sworn for Plff. Do not know the capt. he was at Glendale last Saturday morning. Did not speak to him. Saw him about 1 year ago then going with Oberlin, & this was her testimony.

Mr. Summers being sworn depose & says on behalf of Plff. Saw W. Boggs with Mr. Oberlin about 1 year ago. Saw him once before at Herin. This was all his testimony.

Plff. then read in evidence the depositions of James M. Daniel, Joseph Wilson & John Tronsdale as follows:

"The depositions of James M. Daniel, John Tronsdale, & Joseph Wilson of the county of Wayne and State of Illinois, witnesses produced, sworn and examined before me Jefferson N. Barnhill, Clerk of the County Court in and for said

county and State on this the 23^d day of
November eighteen hundred and
fifty eight, at my office in Springfield
in said county in pursuance of and
in obedience to the annexed notice, and
according to the time and terms of said
notice given by Rindskopf, Bro. & Co. by Silas
L. Bryan their Attorney, to Richard L. Boggs
the said Rindskopf, Bro. & Co. being plaintiffs
in a certain action of attachment pending
in the Clay Circuit Court and undetermined
in said court and in which said suit
the said Richard L. Boggs is defendant.
The depositions of said witnesses are to be
taken and to be read ~~as evidence~~ on the part of said party
~~read~~ as evidence in the said cause
on the trial. The said James M. Daniel
Joseph Wilson and John Trowdale being
first duly sworn by me according to law,
between the hours of 10 o'clock A.M. of the
said 23^d day of Nov^r 1858, & the said James
M. Daniel being first examined depone that as
follows in answer to the following interrogatories
of the plaintiffs.

Int. 1st. Are you acquainted with the parties
to the suit.

Ans. I am acquainted with M. Boggs, but not
with the other parties.

Int. 2^o. How long have you known M. Boggs and
where has he resided?

Ans. I have known Mr. Boggs for 19 years and he has resided in Springfield ever since and now resides in Springfield, Ills.

Int. 3. Did you at any time in April 1858 see the deceased Boggs in company with Robt. T. Cox, except Sheriff of Wayne County Illinois?

Ans. Yes I saw them together.

Int. 4. You will please state about what time in April it was and in about what place, and in your own way all that transpired between the deceased Boggs and said Cox. State all that you heard pass between them and all that was done by either or both of them?

Ans. It was some time along in April 1858 at Hicks Store at Blue Mound in Wayne county. I was on my horse and saw Mr. Boggs & Robert T. Cox coming from the stable and Boggs went into the store. I had seen Mr. Boggs in the morning before that.

Int. 5. State if you please all that you can remember what the deceased said that day about the Sheriff of Wayne county getting service on him?

Ans. I did not hear Mr. Boggs say anything about it on that day.

Int. 6. State what you may have heard the deceased Boggs say at any other time

or please about the Sheriff or deputy Sheriff or any other person getting service of process on him for the May Term of Wayne Circuit Court or any other term of the court?

Ans. I never heard him say any thing.

Int. 7. State if you know or heard the defendant Boggs say when he and Cose had been or even before you saw Boggs go into the

Ans. Store?

I did not hear him say any thing.

Int. 8. State if you please from the appearance and language of Boggs and Cose at the time you saw them about the Store whether they were or were not excited or in a bad humour?

Ans. Doct. Boggs looked very sour. Do not think the said Cose was excited.

Int. 9. State if you please as well as you can recollect how long it was that you saw Boggs & Cose together at the Store before the Circuit Court of Wayne county in the 1st Monday in May 1858.

Ans. It was a few days before court.

Int. 10. State if you please what other men if any were in or about the Store at Blue Point at the time you refer to?

Ans. Anderson Slick and another - his name I did not know.

Cross examined by the defendant in person.

Int. 1. State whether you think the stars of goods at Blue Point belonged to defendant or not at the time you saw Lewis Boggs there together then?

Ans. Probably they were.

James M. Daniel,
I certify that the foregoing deposition was on this 23rd day of Nov^r. A.D. 1838, was taken and subscribed before me the Clerk of the county court of Wayne county.

J. W. Beardsall, Clk.

Adjourned until 1 o'clock P.M.
Examination resumed at 1 o'clock pursuant to adjournment.

Joseph Wilson then next being called and sworn according to law depose as follows.

Int. 1st Please state if you are acquainted with the parties to this suit, and if so how long have you known them or either of them?

Ans. I am partially acquainted with Lockhart one of the members of the firm of the Plaintiff. I have been acquainted with Doct. Boggs for 15 years and upwards. He has resided in Springfield Wayne County ever since my acquaintance with him and now resides in Springfield, Wayne County.

Int. 2nd State if you please where you resided and

what you were engaged in in April 1838,
and the second week before the circuit court
in Clay County on the 1st Monday in May
1838?

Ans. In Henia Clay County Ill. and I was
engaged in business for Doct. Boggs selling
goods as his agent. I think I was
in Henia Clay County the second week
before court and during court.

Int. 3. State if you can whether plaintiffs in
this action sued out a writ of attachment
against defendant and if so at what
time and place?

Ans. The Sheriff of Clay County came down
about the second week before the Clay county
circuit court, May Term 1838, and had
a writ of attachment in favor of the Plaintiffs
and against the defendant R. L.
Boggs.

Int. 4. Please state when, before the Sheriff
came with the writ of attachment, you
saw the defendant, and when last
before the Sheriff came with the writ?

Ans. I saw defendant on Sunday before
and I think I saw defendant the
Saturday evening previous before
the Sheriff came down with the attachment.

Int. 5. Please state when you saw Doct. Boggs

again after the Sunday which you speak?

Ans. I don't think I saw him again during that week.

Int. 6. Please state what the defendant said on the Sunday to which you refer, if anything, about when he was going and when he would be back?

Ans. I avoided having any conversation with Doct. Boggs, it being Sunday and I knew he was in trouble. He stated he was going to St. Louis. If I had any occasion to correspond with him I should address him at Carlyle.

Int. 7. Please state in what county Carlyle is in and how far it is from Genia?

Ans. In Clinton County, about forty miles from Genia.

Int. 8. Please state if you know where Doct. Boggs ^{went} or when he told you he was going on the Sunday you refer to.

Ans. He did not tell me where he was going and I did not know where he was going to.

Int. 9. Please state if you know of your own knowledge or heard defendant say where he got on the train of cars on the Sunday night of which you speak?

Ans. I neither heard him say nor do I know.

Int. 10. Please state whether he staid in Genia on that Sunday or when he went?

Ans. He staid in Beria a part of the day and where he went I dont know.

Feb. 1.st Prof. examined by defendant in person.
Please state if you can the reason Mr. Lockhart gave you for swearing out a writ of attachment against R. L. Boggs.

Ans. He said Doct. Boggs came up and bought goods of them and after having done so they didnt think all was right, and he said Doct. Boggs told him he was going up the river on business and would return again, but they found he came down the river and all they wanted was their debt paid or made secure; but they could not get at Doct. Boggs and he wanted me to assist them in finding him. That he avoided the common process of law and service could not be had on him and the Sheriff of Wayne County could not find him nor get service of process on him, and I told him that the Sheriff of Wayne had served a writ on Doct. Boggs at the inst. of some claimants of Cincinnati and called on Mr. F. George to establish the fact; and Mr. Lockhart stated that he had lost confidence in Doct. Boggs. That he avoided

the services of legal process and they must save their debt by some means.

Re-examined by the Plaintiff's Attorney.

Int. 1. Please state what Lockhart said in the same conversation about the difficulty of the Sheriff of Wayne county had in trying to get service on the defendant Boggs at Blue Point or any other place in Wayne County?

Ans. He did intimate to me that there was a difficulty in getting a process served on Doct. Boggs in Wayne County.

Int. 4. Please state what Lockhart in the same conversation referred to said, if any thing, about process being sent from Wayne County to the Sheriff of Clay County to be served on Doct. Boggs?

Ans. I think he said something about service being sent from Wayne County to the Sheriff of Clay, but what I can't now recollect.

Re-cross examined by Defendant.

Int. 1. Please state if you can if the goods kept by John Flick in April 1858 at Blue Point Wayne County, Mo., belonged to Doct. Boggs of Fairfield, Mo.

Ans. I believe they did, Joseph Wilson,

I certify that the foregoing deposition
was taken and subscribed before me
Clerk of the County Court of Wayne
county on the 23^d day of Nov. A.D. 1838.

J. W. Blenheim, Clerk.

Adjourned until to morrow morning
at 8 o'clock.

Met pursuant to adjournment at
8 o'clock A.M. 24th Nov. 1838, and ad-
journed for witnesses until 10 A.M.
Examination resumed at 10 o'clock purn-
ant to adjournment and John Growsdale be-
ing called and sworn deposes and says.

Int. 1 Please state if you are acquainted with
the parties to this suit

Ans. I am not acquainted with the plaintiffs to
this suit, I am acquainted with ^{the} defendant

Int. 2 State if you please what you may know about
the residence of Doct. Baggs and when he was
the second week before the May term of the
Wayne County Circuit 1838

Ans. 2 Doct Baggs resides in Fairfield Way-
ne County Ills. I think I saw Doct.
Baggs in my office about two weeks before
the Wayne County Circuit court

Int 3 State where you saw him after that time

Ans I saw him during our circuit court

Int 4 State your residence and wheather Doct Baggs
was in or about Fairfield, between the

time you speak of seeing him at your office and the circuit court in May 1858

Ans I reside in Fairfield Wayne County Ills I dont recollect having any conversation with with him between the times

Qut 5th State if you can whether you saw or knew of the dependant being in Fairfield after the time you speak of being in your office up to within ten days of the said term of said court,

Ans. I do not

Qut 6th State what agreement if any the dependant made with you at your office, at the time referred to to return again to your office and wheather he complied with such agreement if any made

Ans I dont recollect of any with me

Qut 7th State what agreement the dependant made at the time, referred to with any person about returning to your office or at any other time or place.

Ans I dont recollect any thing said about returning to my office

Qut 8th State in your own way any conversation you may have heard between Doct Bogg and his creditors of Cincinnati or with a man by the name of Heibberd the time and place and the subject matter.

Ans Nodadiah Heibberd of Cincinnati was here

with claims against W. L. Boggs to collect
from the house of Pendleton, Swift & Co, M. B. Rogers
& Co, Menderson & Thorneau & Lathrop Kolbume
& Lupton employed me as attorney in said cases
Doct. Boggs invited me to his office or shop
to propose terms of compromise of said claims
we went to his office in company of C. A.
Becher his Atty. he made some propositions
to Mr. Helard but they did not agree on terms
of compromise Mr. Helard & myself returned
to my office, and Mr. Helard requested me
to commence suits on said claims, I com-
menced preparing the precepes to have sum-
mons issued on said claims. Doct Boggs then
came into my office and said it was un-
necessay to commence the suits, that if
they could not agree on terms of compromise
he would confess judgments on the claims
that they were just and he wanted to pay
them

Adjourned til 10 o'clock P. M.

Examination Resumed

Qut 9th Please state what defendant said to you
as the Atty of the parties above named about
the same subject matters and about signing
power of Atty to confess judgment

39 Ans. After what Doct. Boggs said about con-

confessing judgment, I went to work preparing power of attorney for him to confess judgment on said claims, and after getting said power ready for signing, I told Doct. Baggs they were ready he replied that he wished to have C. A. Beecher his attorney to examine them, to see that they were all right before signing them. Mr. Beecher was absent that evening and did not examine these papers, that night I think I submitted the papers to Mr. Beecher the next morning and that he thought them getting up correctly.

Ques 10th

State by what authority you drew up these papers or at whose instance

Ans.

I drew them up from what passed between Mr. Baggs & Mr. Humbard with regard to Doct. Baggs confessing judgment.

Ques 11th

State what Doct. Baggs said about signing those papers when he told you to submit them to his attorney, or that he would submit them.

Ans.

I told him the power of attorney was ready and he said very well he wished to submit them to C. A. Beecher to see that they were all right before signing them.

Ques 12

State whether or not the defendant ever signed those papers.

Ans.

He never did.

Cross examination by defendant in person

Qut 1st Please state if you was the attorney of Pindell
Ton, Swift & Co. M. E. Run & Co. Henderson &
Roman Lallier Colman & Sampson, rep-
resented Humbert in April 1858 at the May
Term Circuit Court

Ans I was engaged by Mr Humbert to commen-
ce suits against R. L. Boggs and in favor
of the above named firms.

Qut 2nd State did you not file your precepes for claims
in your hands for the above named firms & af-
tain from the hands of the Clk Circuit Court
for the same against the dependant and place
the summonses in the hands of the sheriff
of Wayne County the evening before you sub-
mitted the above powers to C. A. Beecher the de-
f's attorney

Ans. I think not.

Qut 3.rd State if you please, if the sheriff of Wayne
County got service on the above named
summonses issued to the sheriff of Wayne
County returnable to the said term of the
Circuit Court in due time

Ans The summonses issued in favor of the
above named parties and returned as having
been served on the dependant by Robert G.
Cooper Deputy Sheriff in due time for said term
of court

Qut 4th State if you can whether the Judge of the Circuit
Court, sustained the services on the above

named summonses, served by Rott Cox Depty
sheriff of Wayne county

Ans. My recollection is that the services of
said summonses were sustained by said court
Q. State if you please if you know of summonses
being issued from the circuit court of Wayne
county or any other county in the United
states against R. L. Boggs of Wayne county
Illinois did not get services in due time

Ans. I don't recollect of any coming within
my knowledge

Q. How long have you been familiar with
the circuit court docket

Ans. For several years

Q. State if you please how long you have
known R. L. Boggs as citizen of Wayne
County

Ans. Some twelve or fifteen years.

Q. State if you please how the above named suits
which you were attorney for in May term
1868 of which Robert V. Cox Depty Sheriff of
Wayne County served the summonses of
the above suits got out of the circuit court.

Ans. When I ascertained that I could not
obtain judgment on said claims at that
term of the court I dismissed the suits
and withdrew the papers

Q. Please state if you can where the above
named claims are now.

Ans After I dismissed the suits and withdrew
the papers I handed them to Mr Hubert
again

Qut 9th State if you please from your best knowledge
when the above named claims are at the
present time

Ans I have been informed that judgments were
obtained on the above named claims in the
district court of the United States against
said Rogers at the last term of said court

Qut 10th Please state if you know of L. R. Rogers
having a stock of goods at one of his points
of business in Wayne county known by the
name of Blue Point Illinois

Ans I have understood he had a stock of goods at
that point last spring

Qut 11 Please state if Coy, the Deputy Sheriff of Wayne
county ever told you at ^{what} point in the above
named county he obtained services on the
above named summonses

Ans Mr Coy informed me that he got service
on the above summonses at or near Blue
Point.

Qut 12 State from the best of your knowledge if
R. L. Rogers did not have a dry goods store at
Kenice in Clay county in April 1858

Ans I was in a dry goods store at Kenice said
to be D. A. Rogers and kept by Joseph Wil-
son

Examined by plaintiffs attorney

Qut 1st State what you may have heard Boggs say or do in reference to the services of the said summoners by Robert G. Cox depty Sheriff of Wayne County

Ans I think Doct Boggs denied Coxes reading the summons to him in some of the above cases

Qut 2^d State what was done by Doct Boggs the May term of the Circuit Court in reference to the return made by said Cox on the summonses aforesaid.

Ans Doct Boggs made affidavit at the said term questioning the legality of the service made by said Cox in some of the above named causes

Qut 3rd State if you please all that R. G. Cox told you at the same time and in the same conversation that he told you when where he obtained services on the defendant

Ans Said Cox stated to me, that when he got to Blue Point that he saw Doct Boggs going Crop back from the store, that he rode up briskly to overtake him, about the time he came up with him and spoke Doct Boggs picked up a stick and placed himself in a threatening attitude after some conversation passing between them Doct Boggs

Threw down the stick and they both turned
and went back together, he stated that he
read one summons and ~~what~~^{the} other cases
he had and said. Baggs told him need
not read them that he acknowledged service
of the same

Qut 4 State if you can recollect what Cox
said at the time refused to show for Baggs
got from the store before he overtook him
and how fast he was going when he overtook
him

Ans I think he said about one hundred yards
I don't recollect that he said how fast
he was going

Qut 5 Did he say he was walking or riding
or either

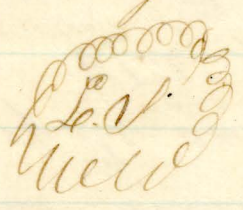
Ans I don't recollect that he said he was
walking or riding

John Crossdale

I certify that the foregoing deposition
was taken and subscribed and sworn to
before me Clerk of the County Court of
Wayne County on the 24th day of Nov
A.D. 1858 J. W. Bankill Co Clerk

I do hereby certify That the foregoing depositions
of James M. Daniel, Joseph Wilson
and John Crossdale, were signed and sworn

to by said deponents, that they were sworn twice each of their first. That they would testify the truth in the case wherein the said Rumschoff Bros & Co were plaintiffs and the said Richard L. Boggs was defendant and pending in the Clay County Circuit Court and secondly after the questions were propounded to said witnesses and they having answered the same as above and the objections and interpositions being made at the instance of said witnesses, they severally signed their depositions and were again sworn by me, that the same were true, that said depositions were taken commencing at 10 o'clock A.M. Tuesday the 23rd day of Nov 1888 and continued by adjournment from time to time as above stated till 5 o'clock P.M. of Wednesday Nov 24th 1888, when they were concluded, that the same were taken in pursuance of the annexed notice at my office in Fairfield Wayne County Illinois

 In testimony whereof I have to
 J. W. Bambill
 set my hand and seal of office
 at Fairfield Wayne County
 Illinois J. W. Bambill Clerk

I hereby certify that the following fees were made in the taking of the within depositions

to wit; My fees as Commissioner in

Taking depositions	3.60
Sheriff fees	2.00
Witness fees	<u>2.00</u>

& that said fees have been \$7.60 &
paid by Silas S. Bay an Atty for Mr
J. W. Barnhill Clerk

This answer of Joseph Wilson to questions
2 & 3 of Examination of said witness by
Plff. excluded before reading depositions to
jury - and this was also the testimony
on said cause offered by the Plff, who
then closed his case in chief

The defendant in said cause then
called John Dalgis a witness of lawful
age, who being duly sworn did depose
that on the 16th April 1858, he had gone
from Blue Point in Wayne County to
Kenia in ~~Clay~~ ^{Clay} County on business
for Dept. business was to telegraph to atty
at Vincennes about goods under attach-
ment there and on the Sunday following
day returned from Kenia to Blue Point
met Dr. Boggs on horse back going to Kenia
as he said, that before this time Flick &
Boggs had been doing business as partners
at Blue Point and about 1st March
1858. Flick had sold out his interest
in store at Blue Point to Boggs, the business

of Rich. Boggs had not been settled & the
 Deft Boggs & Flick had been frequently en-
 gaged trying to settle but that there was some
 unsettled accounts in St Louis against
 Flick & Boggs, which it was necessary to set-
 tle before any final settlement could be
 made between Flick & Boggs, it had
 been and was agreed between Flick & Boggs
 that Boggs should settle the St Louis debts
 it was the Sunday week preceding the sitt-
 ing of the Wayne Circuit Court agreed
 to before that I met Boggs going to Kenia
 when he, Boggs, returned from St Louis he
 brought the books - Wm. Mess had charge of
 the store at Blue Point and Mr. Wilson
 at Kenia for Boggs. Wicks remained at
 Blue Point until May 1858 when it was
 sold out at auction. Groceries had been
 frequently bought in St Louis for the Blue
 Point Store, this was all the testimony
 of this witness.

J. D. Addick a witness for deft of
 lawful age & sworn & called.

He saw Boggs in St Louis on 20th April
 1858 & he then paid the balance due on note
 of Flick & Boggs & I gave note up, I then
 went with Boggs and introduced him to
 some parties for he wished to make a

purchase of salt, I knew the time from having entered on that day on my book the money received from Baggs on said Settlement. I always enter receipts of money on the day when paid, it may probably have been the 21st but I think it was the 20th. Flick & Baggs had before that time shipped to us a lot of produce which we sold & the net produce credited to Flick & Baggs & there had been no settlement of the produce matter until this time, Baggs paid balance on note said balance was small, not to exceed two dollars somewhere from 68 to 78 - this whole note had been something less than \$100, but the precise amount he did not remember. This was all such witness testimony

Left there introduced as a witness Mr. W. George, who being of lawful age & first sworn says, I saw Baggs some days preceding the attachment in South Kenia, he told me he was going to Springfield to engage the services of Judge Logan. Lockard one of the plaintiffs came to Kenia two or three days thereafter and I heard a talk between him and Joseph Wilson the Clerk of Baggs in the Kenia Store. Wilson was assuring Lockard that Baggs had been served with the writs in Wayne County upon the

suits commenced there and that he Boggs did not try to evade service, Boggs lived with his family in Wayne County in Fairfield and had lived there for the last fifteen years and was a practicing physician there. At this witness was at the time living in Kenia and doing business for Wamock witness understood Boggs to say he would be prepared for this fight - understood this as referring to Wayne County suits. Boggs had not practiced much for a year or two and had spent a good deal of time about business in Kenia sometimes a day & night & sometimes 3 or 4 days at a time & this was all his testimony.

The defendant here closed his case & this was all the testimony in said case either for plaintiff or defendant, and all the testimony that was submitted to the jury in this case and after argument the court gave instructions in writing for the plaintiff as follows.

No. 1)

That the evidence in this case may be circumstantial in its character yet such evidence is legal & the plaintiffs are not bound to prove their case by positive testimony

No. 2 That if the jury believe from the evidence

that the defendant Boggs had a place of business
in each of the two counties of Wayne & Clay
adjoining where proofs of service might be had
on him in either of them, the acts and declara-
tions of the defendant Boggs in Wayne county
at and about the time of serving out these
attainments by the plaintiffs in Clay County
may be considered evidence by the jury to
explain and account for the departure of the
defendant Boggs from this county of
Clay at the time of commencing this suit
& for the purpose of ascertaining the in-
tentions with which he did so depart

No. 3 That the declarations of Lockard one of the
plaintiffs in this suit when called out
by the defendant is proper evidence for the
consideration of the jury and all that
Lockard said to Wilson at the same time
and in the same conversation part of
which has been called out by the defendant
is evidence before the jury and should be con-
sidered by the jury for what it is worth.

No. 4 That although the Deft may have while
he was out of Clay county some business
yet if he left the county for the purpose of
avoiding the ordinary proofs of the law, under
the belief that proofs had or would be

issued against him the jury should find the issue for the plaintiffs if while so out of the county plaintiff sued out their attachment.

No. 5.

That this is a peculiar case and the rights of the parties depend upon the intention of the defendant Boggs and the evidence which can be resorted to under the circumstances is the acts and declarations of the defendant Boggs, and if the jury believe upon review of all the acts and declarations of the defendant that the said Boggs intended by his departure and absence from the county of Clay to St. Louis or Carlyle or elsewhere to evade the ^{service of the} ordinary process of the law which the plaintiffs designed or desired to issue out of the circuit court of Clay County they should find the issue in this case for Plaintiffs.

No. 6

That in order to entitle the plaintiffs to sue out an attachment against the defendant it was not necessary for the plaintiffs to sue out a summons and have it returned not found made by the sheriff, provided the jury are satisfied from the facts and circumstances found that the conduct of the defendant Boggs in his departure from Clay County was to evade or defeat ^{the} service of a summons upon him.

These were all the instructions given for plaintiff to bring each of which the defendant by his attorney then & there excepted.

The court then gave the following instruction at the request of the Deft.

1 That by law suits and causes of action for money due and can only be brought by ordinary process in the county where the Deft resides or where the debt or damages is specifically made payable & while the defendant may be sued in any county where he can be sued, nevertheless the law enforces upon the Deft no obligations either to go into a foreign county that process may be served on him or to remain there if he should so go, and he cannot be charged with concealing himself if he should refuse so to do

2 Whether the Sheriff of Wayne County or Clay County did or did not execute writs on the defendant is wholly immaterial, unless the proof show that the defendant did conceal himself so that the ordinary process could not be served on him & whether the Deft did or did not put an officer is wholly immaterial - The issue in this case is for concealing himself and not for resisting or for any other cause of attack made, save that of consenting himself as charged.

The going out of the jurisdiction of the court is not a concealment such as warrants an attachment if the party goes about his business or for any other purpose than with the intention to conceal himself from the ordinary process of the law & in this connection the jury will consider the fact, if shown that all process which had been previously issued had been served on the Deft. If the claim upon which this action was commenced was ^{not} in the county of Clay at the time that Pogg left said county.

4 In considering all the facts in this cause if the jury are satisfied that the going to St Louis or elsewhere of the Deft did not put the plaintiff in any worse condition or delay than any more than if he the Deft had remained at his own home, they will consider such facts in determining the intention, with which the Deft left his home & whether it was with the purpose of concealing himself from the ordinary process of the law.

5 That the declaration which Pogg made before leaving home or on the way are competent to show this purpose for which he left home & went to St Louis and if unopposed by other proofs may tend to prove that it was not for the purpose of evading the service of process.

6 If the process in all cases or suits brought in the County of Wayne had been served on Boggs before he came into Clay County then he could not be deemed to conceal himself from their process although a summons in one of those suits may have been unexecuted in the hands of the Sheriff of Clay County or any other place. And these instructions were all given for Defendant.

The Defendant then asked the Court to give the following instructions:

4 The Plaintiff cannot recover in this action his damages unless he first proves those damages, and the affidavit is not evidence for that purpose.

8 The plea to the affidavit only puts in issue the truth of the affidavit and the plaintiff must prove his demand or the jury must find for the defendant.

9 The jury must believe from all the circumstances that Boggs in going to St Louis went for the purpose of preventing the ordinary process of the law, that is a summons being served upon him in the hands of the sheriff or other officers of Clay County - when the attachment was prayed or the jury will find for the defendant. That plaintiff must prove that there was process or summons

in the hands of an officer in the County of Clay, upon the suing out of the attachment, which could not be served on the jury will find for the defendant.

10

Before the jury can find for the Plaintiff in this action, they must be satisfied that the defendant concealed himself to prevent the service of ordinary process if issued from a court having jurisdiction over the subject matter & is that ~~of~~ the residence of the Defendant, was and has been shown to be in Wayne, and at the time he is alleged to have concealed himself from the ordinary process it was too late to have served a process for the next following term of the court. Then the Defendant was under no obligation to go into a foreign county that he might be served or if he did go there in and about his ordinary business and in pursuit of that business he is under no obligation to remain there to await such process as might be thereafter issued within time for that court.

11

Under the attachment law the Defendant cannot be charged with concealing himself by going out of a county when his residence is in another and different county unless the proof shows a process in hands of some officer in such county & the

going is to conceal himself from its execution, all of which said instructions from 4 to 11 inclusive of both numbers the court refused to give to the opinion of court refusing to give such instructions the depts then & there excepted

The jury then retired to consider of their verdict the parties Plff & Def consenting that they seal verdict & separate & meet the court on next morning & afterwards to wit. on the 9th day of said term of said court returned into court the following verdict "We the jury find for the plaintiff" which verdict was signed by each of the jurors and then upon and upon the relation of said verdict the defendant moved said court for a new trial for ^{the} following reasons.

- 1 That the verdict of the jury was contrary to evidence
- 2 That the verdict of the jury was contrary to the law & to the law & the evidence
- 3 That court erred in refusing to give the instructions asked by Deft
- 4 That the Court gave erroneous instructions at the request of the Plff & the court then & there ^{upon} ~~refused~~ the consideration of said motion overruled the same and refused to grant a new trial in said cause

to the overruling which motion & upon
 to grant a new trial the Sept Term & there
 by his Council Excepted and then & there
~~presented~~ ^{tendered} this his bill of Exceptions &
 prays that the same be signed and sealed
 and made a part of the record in said
 cause which is done

A. Hitchell Seal
 Clerk

State of Illinois Clay Circuit Court
 May Term 1859.

Rondakoff Bros & Co.

vs

Attorney

Richard S. Boggs

Be it remembered

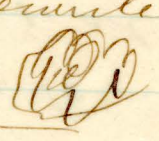
that on this day Wednesday the ninth
 day of the May Term of said Circuit
 Court came the plaintiffs in said
 cause again by their attorney and the
 Sept having made no further plea or
 motion it was ordered by the Court
 that the defendant in said cause
 be called & said defendant having
 been three times solemnly called anno-
 unced not it was thereupon considered
 by the Court and ordered that said de-
 fendant be taken & considered & regarded as
 being in default & thereupon the plaintiff by

their counsel moved the court to empanel a jury to assess the plaintiffs damages in said cause, and thereupon the court ordered such jury to wit; Alfred J. Moore, M. H. Presley, M. H. Davis, Allen Landwehr, J. B. Gilliam, Wesley Golden, Benjamin Jones, Edward Fender, John Kellums, Harrison Ingraham, W. J. Martin & A. S. Coney; twelve good & lawful men, who being sworn to assess the damages in said cause Silas Bryan was sworn as a witness on behalf of the plaintiffs & on his oath stated that a short time, not more than a day or two after serving out said writ of attachment, the said Dept Rogers said to him that he had in the month of March previous thereto adjusted & settled his account with plaintiffs in Cincinnati and upon settlement he the Dept was indebted to said plaintiff's book account in the sum of \$ 1997.76 cents, which said sum was at that time due and unpaid from Dept to said plaintiffs. Thereupon the Dept moved the court to reject said testimony, which motion the court then overruled & to the opinion overruling such motion & permitting said testimony to go to said jury the Dept then & there excepted and that was all the

testimony offered by Plff & all offered to the jury and thereupon the court at the request of the plaintiff instructed the jury as follows to wit; In assessing damages in this case the jury will allow the plaintiffs the amount proved to be due from the defendant and six percent interest on the amount from the time settlement was had and a balance ascertained to be due, if such settlement of amount has been shown to the jury which instruction the Dept by his Council then & there excepted & moved the court to reject such instruction, but the court overruled such motion & gave such instruction & to the opinion of court overruling such motion & giving such instruction the Dept by his Council then & there excepted, the said jury then retired & returned into court verdict as follows

"We the jury find for the plaintiffs and assess the damages at twenty one hundred and twenty and $93/100$ Dollars
(Signed)

W. J. Martin Foreman
and thereupon the Dept again by his Council came and moved the court to set aside said finding & verdict & enter a judgment for the Dept, which motion the court overruled & to the

opinion of court overruling said motion
the Dept there & there excepted. The Dept
there moved said court to set aside
said finding & to enter a judgment for the
plaintiffs for nominal damages in said
cause, which motion the court also over-
ruled. To the overruling the Dept there & there
excepted & ordered that his bill of
exceptions & pray the same be signed &
sealed and made a part of the record
in said cause which is done & there
upon the Dept prayed an appeal
to the Supreme Court at Mount Ver-
non which is granted on the
Dept Executing Bond in the
sum of \$2500.00 conditioned
according to law with R. P. Hanna
& David Wright jrs as his securities
A Ritchell 

Know all men by these presents
that we Richard L. Briggs, Robert
P. Hanna and David Wright jr
are held and firmly bound to Joseph
Brumskopf Raphael Brumman, Thomas
J. Ireland Joseph Greider Morris Brumskopf
Joseph Limer Brumskopf & Charles O.
Lockard in the penal sum of
twenty five hundred dollars, which

well and truly to be paid we bind ourselves our heirs executors administrators and assigns as witnesses our hands and seals This 9th day of June A.D. 1859. The above obligation is however is subject to the condition following that is to say, that whereas the said Adolph Rindes Kroph Raphael Ruckman Thomas S. Ireland Joseph Guller Morris Rindes Kroph Simon Rindes Kroph & Schaub & Lockman, did at the May term to wit at the 8th day of June A.D. 1858, at the Circuit Court in and for the County of Clay recover a judgment against the said Richard L. Briggs for the sum of two thousand one hundred and twenty dollars & ninety three cents their damages and costs of suit and whereas also the said Richard L. Briggs has prayed an appeal to the Supreme Court from the said judgment of the said circuit court. Now if the said Richard L. Briggs shall prosecute his appeal with diligence and effect and shall pay the said judgment costs interests and damages of said judgment, if said judgment shall be affirmed, then this obligation to be void otherwise to remain

in full force and virtue

A. Mitchell witness to signature { R. L. Rogers ^{nm} ~~seal~~
of Rogers & Hanna { R. P. Hanna ^{nm} ~~seal~~
Attest for David Wright, David Wright ^{nm} ~~seal~~
Sander ^{his} ~~mark~~ ^{mark} ~~mark~~

Bound & proved in open court this
9th June & 10th day of May Term of
Clay C. C. 1859.

A. Mitchell Judge

State of Illinois }
Clay County } J. P. Hungate
Clerk of the Circuit Court of said
County hereby certify that the foregoing
contains a full & perfect copy
of all the papers papers filed, all the
orders & proceedings had in the Clay
Circuit, & of the bills of Exception
& appeal bond as appears of record
in my office as Clerk of the Clay
Circuit Court, in the case of
Rendolph Bros & Co vs Richman
L. Rogers.

Given under my hand and
official seal at Louisville
this the 7th day of November
A.D. 1859.

J. P. Hungate Clerk

64.

Bill of Costs	
all costs in circuit court	17.15
" Record for Supreme Court	<u>13.00</u>
Sh	32.15
Shipp Costs Th. Phelps	8.80
" " B. F. Regualais	8.85
" " Th. Baity	1.50
Printers fee	5.00
Jury & Docket fee	4.25
Dfts witness fees	18.40
Depts " "	<u>37.50</u>
Total Costs	\$ 116.45

Supreme Court at Mt. Vernon.
Nov. Term 1835.

Richard L. Boggs, appellant	} Appeal from Wolfe County.
vs. Pinneroff, Bro. & Co. Appellees	

The said Plaintiff Boggs comes and
assigns the following causes for error viz:

- 1st. The court below admitted improper testimony.
- 2^d. The court gave improper instructions to the plaintiffs below.
- 3^d. The court refused proper instructions for defendant below.

4th The court erred in overruling the motion for a new trial.

5th The court erred in calling a jury to assess the damages after the jury that tried the issue had been discharged.

6th The court erred in overruling defendants motion (appellant) to set aside the verdict of the second jury, and in refusing to enter a judgment for nominal damages.

Wherefore he prays that said judgment of the circuit court may be reversed and set aside.

Borman & Harrow, and

E. Beecher.

for Appellant.

For Answer In Error

Haynie & Bryan

for Answer In Error

53

66

R. L. Boggs

by

Rindskopf et al

Filed Nov. 16. 1859.
A. Johnston Clerk
Paid by Indigo Bank
21. Nov. 1859 - \$5.00

At New York Nov 21st 1857
Received of ~~Re~~ ~~L~~ ~~A~~ Boggs per Judge
C Beecher, the sum of \$4,00, pay-
ment in full, for printing abstract
and brief. for Supreme Court.

John A Wall,
Printer At v fees.

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST GRAND DIVISION—NOVEMBER TERM, 1859.

Page of
Record.

R. L. BOGGS,

VS.

RINDSHOFF & CO.

1

This suit was commenced by attachment by appellees against appellant. Affidavit alleges that "Defnd't conceals himself and evades the officers so that the ordinary process of the law cannot be had or served on him."

5—7.

Attachment was sued out on the 22d April, 1858, was levied on property on that day and served on def't below on the 24th day of same month.

8

Declaration in assumpsit in usual form.

11

Def'dt plead in abatement that he "Did not conceal himself and evade the officers, as alleged."

19

At May term, 1859, issue being joined on the plea a jury was called, and after hearing the evidence on adjournment of court at night it was agreed by the parties that the jury might seal their verdict and deliver it to their officer and separate. On next day the following verdict being in the hands of their officer was read: "We the jury find for the plt'f." Defn'dt below was then called, and not appearing, it was adjudged by the Court that he be considered in default, and that a jury be called to assess damages, who returned a verdict for plt'fs (appellees) for \$2,120 93. Jdg'mt entered on the verdict.

20

20—58

24

During the trial a witness was asked by plt'fs below whether he, as sh'ff of Clay co., had a writ against appellant about the time this attachment was sued out, witness ans'd he had such writ sent to him from the cl'k of Wayne co; he went to defnd'ts store but did not find him. Plt'fs below then introduced the following witnesses:

25

S. Shirley says: Heard def'dt (Boggs) say, in speaking of the Hibbard debts, they were trying to break him up; if he would make a fight they could not get a jdg'mt in two years.

25

T. H. Lowry says: Had a conversation with appellant about the time of commencem't of this suit; was principally the Hibbard business; he said he did not care if they did get him in Wayne that they could not get a jdg'mt against him in five years, but

+ about

STATE OF ILLINOIS—IN THE SUPREME COURT—FIRST GRAND DIVISION—NOVEMBER TERM, 1859.

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VS.

RINDSHOFF & CO.

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26

G. Hoskinson says: Saw Boggs frequently in Xenia after process was served on him in Wayne; saw him there the Sunday before attachment was served; said he did not care how much they served on him in Wayne, but they should not in Clay; the talk was about the Wayne co., suits.

27

John Eberlin says: Has seen appellant three or four times; was at witness' house over a year ago on Sunday evening; staid over night; next morning went to Greendale; witness resides in Marion co., four miles from Xenia; he wrote some letters next morning; I stopped train for him next morning; he came there on horseback; horse remained at my house until next Saturday; Boggs was in Greendale on Saturday before he got on the cars; said he was going to Springfield to see Judge Logan; that he had some goods attached at Vincennes; tried while there to buy 80 acres of land; directed me, if I could, to make the trade and turn in his horse.

30

J. McDaniel says: Knows appellant; he has resided in Fairfield 19 years; saw him and R. T. Coxe, dpt'y sh'ff of Wayne co., together at Blue Point a few days before the Wayne Cir. Court; Boggs looked sour.

32

J. Wilson says: Have been acquainted with Boggs 15 yrs; he has resided all the time in Wayne co; at commencement of suit I was in business for him at Xenia; saw him on Sunday before attachment was levied; did not see him again that week; he said he was going to St. Louis and if I wrote to him to direct letters to Carlyle; Lockhard (one of plt'ffs below) said defnd't did not do right; said he avoided service of process in Wayne; goods at Blue point were appellants.

37

John Trousdale says: Saw Boggs about two weeks before the Wayne court; next saw him during said court; I reside in Fairfield; don't recollect seeing him between those times; Hibbard had several claims against him; he proposed to confessed jdg'mt on them but did not; I brought suit on them and obtained service of process; don't know of any writs against him but what were served; he denied that some of said writs were read to him; Coxe—dpt'y sh'ff—said he saw Boggs going back from the store to Blue Point; when he came up with him, Boggs picked up a stick, but after some conversation threw down the stick and went back to the store; said Boggs had got 100 yds. from the store when he overtook him; this was all the evidence for appellees.

41

Defnd't below introduced the following witnesses:

47

John Daly said: Flick & Boggs had been in business at Blue Point; F had sold out to B., but there was some unsettled accounts in St. Louis which had to be adjusted before they could make a final arrangement; they agreed that Boggs should settle them; when he returned from St. Louis he bro't the vouchers of settlement of accounts there; witness had charge of store at Blue Point and Wilson at Xenia.

48

G. D. Adcock said: I saw Boggs in St. Louis on April 20, 1858; he then paid balance on note of Flick & Boggs; I went with him to some persons from whom he wished to purchase salt.

49

W. George said: Saw Boggs in Xenia some days preceding attachment; said he was going to Springfield to employ Judge Logan; one of plt'ffs below came to Xenia two or three days after; Boggs was a practicing physician living with his family in Fairfield, and had lived there 15 yrs; had not practiced much for a year or two past; spent a good deal of time about business in Xenia; sometimes a day and night, and sometimes three or four days at a time. [This was all the evidence.]

50

The court instructed the jury for plt'ff below: "That in order to entitle plt'ffs to sue out on attachment against def'dt it was not necessary for plt'ffs to sue a summons and have a return 'not found' made by sh'ff: provided the jury are satisfied from the facts

and circumstances found that the conduct of def'dt in his departure from Clay co. were to evade or defeat service of a summons on him; to which instruction def'dt objected—objection overruled and def'dt excepted. The defd't below then asked the following instructions:

55 No. 7. The plt'ff cannot recover in this action his damages unless he first proves those damages, and the affidavit is not evidence for that purpose. No. 8. The plea to the affidavit only puts in issue the truth of the affidavit, and the plt'ff must prove his demand or the jury must find for the def'dt. No. 9. The jury must believe from all the circumstances that Boggs in going to St. Louis went for the purpose of preventing the ordinary process of the law, that is, a summons being served on him in the hands of the sh'ff or other officer of Clay co., when the attachment was prayed, or the jury will find for the def'dt; that plt'ff must prove that there was process or summons in the hands of an officer of Clay co., upon suing out the attachment which could not be served, or the jury will find for def'dt. No. 10. Before the jury can find for the plt'ff they must be satisfied that the def'dt concealed himself to prevent service of ordinary process if issued from a court having jurisdiction of the subject matter; and if the residence of defdt was in Wayne, and at the time he is alleged to have concealed himself from the ordinary process it was too late to serve a process for the next term, then the defdt was under no obligation to go into a foreign county that he might be served, or if he did go there about his ordinary business he was under no obligation to remain there to await such process as might be thereafter issued within time for that court. No. 11. Under the attachment law the defdt cannot be charged with concealing himself by going out of a co. when his residence is in another and different co.; *+ unless* under the proof shows a process in the hands of some officers in such co., and the going is to conceal himself from its execut'n.

57 All of which instructions were refused by the court to which opinion the appellant excepted. After the rendition of the first verdict defdt below entered a motion for a new trial, which motion was overruled and defdt excepted.

60 On second verdict being returned appellant entered a motion to set aside the verdict which motion the court also overruled and defdt excepted.

61 Defdt below then moved the court to set aside such finding and enter a jdg'mt for plt'ff below for nominal damages, which was overruled by the court and defdt excepted.

Defdt below appealed to this court.

Borman & Harnes, att
Edwin Beecher, jr
Appellants

BRIEF FOR APPELLANT.

R. L. Boggs, vs. Rindshoff & Co.

where

1. The evidence does not show that appellant was avoiding process. His residence was in Wayne co. ~~when~~ he was served with process in all cases there commenced against him. He was only temporarily in Clay co., and because he would not stay there to be sued could not give a right to the extraordinary process of attachment.

show

2. The account on which this suit was bro't was not in the State when Boggs went to St. Louis; nor is there a particle of evidence to ~~show~~ that he expected this claim would be sued on. How then could he be evading service?

3. The evidence clearly shows that in his trip to St. L. appellant was on his ordinary business. 4. The instret'n given to pl'tff below we think was erroneous. 5th. The instret'n asked by appl't and refused by the court, No. 7, 8, 9, 10, 11, is believed clearly to be the law—were applicable to the case, and ought to have been given. 6th. Where an issue to the contry is joine'd on a plea in abatement and the issue is found for the pl'tff, the jdgmt is final—that pl'tff recover. McKintry vs. Pennoyer, 1 Scan., 320; Motherell vs. Beaver, 2 Gilm., 70; Moeller vs. Quarrier et al, 14 Ill. 280. Hollingsworth vs. Duane, Wallace 57; Moore vs. Morton, 1 Bibb, 234; McCarter vs. Chambers, 6 Wendell, 649; Haught vs. Holly. 3 do., 258; Jewett vs Davis, 6 N. Hamp., 518; Mc-haffy vs Shore, 2 Penn., 376; Alling vs Shelton, 16 Conn., 436; Myers vs Hunter, 20 O. R. 381; 1 ch. Pl. 464-6; 2 Greenl. Ev. sec 27; 1 Bacon's abdgmt p 38; Peach vs. Mills 13 Ver. 501.

7th. The first jury having failed to find the damages a second jury could not be called for that purpose. Hollingworth vs Duane, supra; Clement vs Lewis, 3 Brod & Bingh. 297; Alling vs Shelton, supra Myers vs Hunter, 20 O. R. 381 and note; Eichorn vs Le Maitre 2 Wilson 367; 3 Saunders 210 g n 3; Neal vs Mills 5 Blackford 208.

1300 Maina Harrow, and

Ed. Beecher, for

Appellant.

53

Boys

m

Barclay

1558

July Oct 21. 1859

at Liberton 6th

Supreme Court of Illinois.
Nov. Term 1857.

Richard L. Boggs.

vs.

Adolph Rindskopf,

Raphael Burman,

Thos. L. Ireland,

Charles O. Lockard,

Morris Rindskopf &

Simon Rindskopf,

Partners, trading under the name
& style of Rindskopf, Bro. & Co.

} Appeal from
Clay County.

The Clerk will please
docket the above case, & oblige, &c.

Borman & Herron, and
C. Beecher, for Appellants.

⁵⁷³
R. L. Bopp,

vs.

Rindskopf, Brew Co

Pluribus.

Filed Nov. 16. 1857.

N. Johnston cl^{ck}

$\frac{573}{2}$
R. L. Bopp,

is,

Understaff. Br. Ho

Pre-ripe.

Filed Nov. 16. 1859.
A. Johnston, clk

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Borman & Harrow, in

E. Beecher, for

Appellant.

15 *Bl*

Hague

3 Wend 262-3 - Here an assignment was made after verdict against plea in abatement

5 Salmon 22-3

BRIEF FOR APPELLANT.

R. L. Boggs, vs. Rindshoff & Co.

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Brown & Harrois, and

E. Beecher, for

5 Blackf 208
6 Minn 244
3 N.H. 232

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53-25-

Buggs

my

Benedict

Filed Apr. 24, 1859.

Mr. Johnston C.M.

Brief for appellee

We maintain that the evidence does show by the weight of proof that Baggs was avoiding process at all times there is evidence to support this finding and in such cases the verdict must stand.

If Baggs Residence was in Wayne Co. Still he had a place of business in Clay - Still I maintain a fair construction of the Statute will authorize attachment in any County where debt may be found, If he is trading seller of process there or where he really resides - See Statute

It makes no difference that the account on which we sue below may not have been in this State when Baggs went to St Louis. If he was then trading seller, the attachment may issue. It is not required that he should be trading our Process.

The instructions for plaintiff we maintain laid down the law Cornetley and the Alft instructions below which were refused are not Cornetley.

When an issue of fact is found on a plain statement the judgment is quod procurant in Ordinary Cases, arising upon the Common rules of pleading - but Even then may not the Court call a jury ^{to} find what the Amount due is? The rule is that Plaintiff may recover, and then the jury is called to say how much

But even if the rule insisted on does obtain in all ordinary cases of pleas in abatement, and even if in ordinary cases it is incumbent on the plaintiff to submit his proof of indebtedness at the time he submits the proof on the issue of fact still that does not make this case then is a statutory transgression of an affidavit not a new fact, not a non payment - or a misjoinder or pendency of another suit - or misnomer made to appear by a plea setting them up, and then for the first time shown in the record, but a mere denial of what is shown already by the record - This issue is formed to try the Plaintiff's common law right to this remedy, If the transgression is true his right is denied, if the affidavit is true his right to this form of remedy is sustained. Now his right, depending on this fact, that being-remained is admitted as true, and then they go to the issue on the Declaration: Now by what rule or reason is it, that a defendant in attachment gains a right to a jury trial by admitting his right to this remedy, when by denying it he is denied a jury to pass upon the ~~substance~~ extent of indebtedment, It seems to me that this position is to his prejudice and that the error if an error at all is in his favor & hence he cannot complain.

But again it is a rule of pleading that whatever is not denied or put in issue is admitted as true ~~if that be so~~. In this case the defendant had the right to transgress by simply plea the fact of indebtedment as stated in the affidavit, See the Statute, If this be true, Since he did not deny or transgress this fact but only chose to transgress the trading of Process

he thereby admitted the indebtedness as stated in the
affidavit. Then if the issue joined be found against
the deft. the jury might have gone on as they
insist and rendered judgment for all the plaintiffs
accounts as sworn to for it is admitted not
being denied. Because the jury did not do as
this they complain, - It does not prejudice
them. the plaintiffs are limited by their Sworn
Statement. And if another jury is called to
assess damages it is only extending to
~~them~~^{him} a benefit which he insists he is not
entitled to, it is this error - Now suppose
Baggs had chosen to swear ~~that~~ and traverse the
fact stated in the Affidavit that he owed plaintiffs
below, and none other, would not that traverse
have admitted fully that he was evading
service of process? It certainly would, then
if he chooses to traverse the statement that he
was evading process does it not admit the
indebtedness as stated in the affidavit - he
could traverse all the affidavits if he wanted to
for debts can be paid as many times of the
same kind as is necessary for his defence -
Then if he did not want to traverse the fact
of indebtedness but chose to admit it, and
did solemnly admit it on the record, how is
it to his prejudice for the Court to call another
jury and allow him to come and dispute
those tried a fact that by the record is now
adjudged against him;

None of the cases of plea in error as far as
I have examined comes up to this point they
all go to the old plea in abatement, I do not
meet this Statutory traverse,

There is however one case where this very ruling
of the Court was questioned in our own
reports, and where on the argument ~~it was~~
this very error was abandoned. by one of
the most learned jurists of the State -
It arose in the Case of Sloo & White vs
Wilson 5 Gill 22-3. In that case
the affidavit set up the fact that Sloo & White
were removing their property to - this was traversed
a finding by jury was returned for plaintiff below. &
Judgment of Respondent Ouster rendered &
then another jury was called to assess damages
this was assigned for error and in the argument
of the Case Judge Scales for plaintiff in error
abandoned this assignment (See the report)
This identical question is directly raised by
the record in that case. There was a jury impaneled
to try the issue on the plea in abatement
they returned verdict for plaintiff below on that issue
alone. Judgment respondent Ouster. Excepted to
A New Jury Called, & issue tried. & found for
the plaintiff - and on writ of error by defendant
below. Judge Scales abandoned this assignment

But I would inquire of this Court how
in this case could the Court below have done
apparently - the parties had agreed on a
Sealed Verdict. & next morning it was opened
without calling the jury & found simply
"for the plaintiff" If they had given 2000.
or more against defendant he insists it would
have been right - but often waiving an
oral verdict - waiving the presence of the
jury when a Sealed Verdict was opened they
now insist that because the jury did not

renders

a large verdict in damages they would. & because the Court allowed them another fair opportunity to contest the amount due (two fair trials instead of one) the Court would

The truth is the first issue is only a matter of determining the pliffs right to the remedy he adopted - Attachment is an extraordinary remedy - In ordinary suits the law presumes every man has the right to sue & bring assumpsit - or any other action, and his right to the remedy cannot be tried or disputed. Except by trying the merits, but in attachments the presumption is against the right to the remedy, hence the law requires an affidavit setting up certain facts to leave his right upon, and except him from the legal presumption against this remedy - To guard still further the exercise of this right & protect depts - the Statute has allowed a sworn traverse of this affidavit - I. E., it has allowed one affidavit to be rebutted by another - and thus raise again the presumption that the plaintiff had no right to the attachment remedy Now before he can have the benefit of the remedy he has chosen, he must prove his right to it - And when this is done is he not just where he would have been if his affidavit had not been traversed - That ^{is} he is standing in Court with the legal presumption, against his "right to this remedy" over and over

In Support of these views I refer the Court to the following authorities found in the Books and cases to the great Code of Common Sense & Sound Logic Against each of which is omitted from it is Contrary to decided Cases

This is plea in abatement	5 Jul	22-3
10. Mo R.	274	17. Idm 33
13. "	547	3 Wnd 260-1-2
17. "	745	Doke attach 118.
R. J.		<u>Revised Statutes</u>
14. Ill	389	

I Meaynie
for deft & error

53-25

Parents & Brief
of
I Meaynie

Rich L Baggs

by
Rudshoff also

Marion Cady