No. 13216

Supreme Court of Illinois

Farrell

vs.

Pearson et al

71641 

STATE OF ILLINOIS.

SUPREME COURT.

Third Grand Division.

1861

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Farrell
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SUPREME COURT,

Third Grand Division,

GUSTAVUS C. PEARSON AND
JOHN H. F. GRACE
vs.
JOSEPH CLARK AND
WILLIAM H. STUDY.

ABSTRACT OF RECORD.

Filed May 1st 1861
L. Leland
Clerk

CHICAGO:
BEACH & BARNARD, PRINTERS, 14 SOUTH CLARK STREET.
1861.

IN THE

SUPREME COURT OF ILLINOIS,

THIRD GRAND DIVISION.

April Term, A. D. 1861.

GUSTAVUS C. PEARSON AND JOHN H. F. GRACE

vs.

JOSEPH CLARK AND WILLIAM H. STUDY.

ABSTRACT OF RECORD.

1 *PLACITA.*

2 *AFFIDAVIT OF GUSTAVUS C. PEARSON,*

States that plaintiffs have recovered judgment in this Court against defendants for the sum of $795.90; that execution has been issued and returned unsatisfied.

That defendants have no property, within the knowledge of this

affiant, liable to execution, and that he has just reason to believe that Joseph Farrell is indebted to the said defendants, and has effects and estate of said defendants in his house, and prays garnishee process against Joseph Farrell.

3 *SUMMONS*— Served 12th day of August, 1859.

4 *ANSWER OF JOSEPH T. FARRELL*, filed 18th, Oct. 1859.

5 States that he had or has no property belonging to the said defendants, or either of them, nor was or is indebted to them or either of them, in any sum which is now in any manner subject to the claim of said plaintiffs, and to the best of his knowledge, information and belief, except about the sum of seventy dollars, which he has ready, to be paid as the Court shall direct.

5 *VERIFICATION OF ANSWER.*

6 *EXCEPTIONS TO THE GARNISHEE ANSWER*, filed 12th November, 1859.

States that said garnishee does not say he had no property belonging to said defendants, nor that he was not indebted to said defendants at the time of the service of the garnishee process, but says that had or has no property belonging to said defendants, or either of them, nor was or is indebted to them, or either of them, in any sum which is *now* in any manner subject to the claim of the said plaintiffs. In which particular the said plaintiffs except to the answer of the said garnishee as evasive and insufficient, and pray a full answer.

HERVEY, ANTHONY & GALT.
Attornies for Plaintiffs.

7 *Exceptions sustained*, and garnishee ordered to answer further.

8 *FURTHER ANSWER OF JOSEPH FARRELL.*

States that at the time of the service of the garnishee process he was in Chicago, two hundred and eighty miles from his place of residence; that at that time he supposes, but does not know personally, that there was in the possession of his clerk, at his residence, three

horses and a saddle and bridle worth about one hundred and fifty-seven dollars which he had purchased conditionally, giving his note,
9 due in sixty days, which purchase was made on or about the 3rd of August last past; that it was agreed between respondent and said Clark and Study that in case they could get more for the horses within two weeks than that price they were to have the right to redeem them, upon the return of said note and payment of expenses about same; that this agreement was known to his said clerk; that on the day of service of said garnishee process, or before he had time to communicate to his said clerk, the said clerk had delivered up said horses, bridle and saddle to said Clark & Study, and received back
9 the said note in pursuance of said agreement; that this was done without his knowledge or consent; that as soon as he discovered the fact he communicated the same to plaintiffs, and they commenced pursuit of said horses as the property of said Clark & Study; that plaintiffs obtained one of the horses and advertised it for sale as the property of said Clark & Study, and also obtained a large portion of
10 the proceeds of the other two horses.

He admits indebtedness about the sum of $70, balance due upon the purchase of certain flour of Clark & Study, which is offset by $18, due for keeping said horses, which was to be applied in that way. Further states upon information and belief that the judgment upon which the garnishee process was founded has been fully paid and satisfied by the defendants, and that he should be discharged from the proceedings; that he had or has no property of the defendants, nor was he or is he indebted to them, or either of them, in any larger or greater sum than above admitted.

VERIFICATION OF ANSWER.

11 *REPLY OF PLAINTIFFS*—filed 13th December, 1859.

States that said answer is not true; that at the time of serving garnishee process they aver said Farrell had in his possession and belonging to said defendants, property and effects to the amount of $257 over and above the $70 which he admits, and this they are ready to verify.

12 And as to the matter of his clerk leaving the property go out of his possession, they know nothing, but leave said Farrell to prove the same.

13 *TRIAL AND VERDICT.*

We the jury find the issues for said plaintiffs, on issues joined with said garnishee Joseph Farrell, and find the amount due from said garnishee Joseph Farrell to the defendants, Clark & Study, to be the sum of $257.

14 *MOTION FOR A NEW TRIAL.*

Motion overruled and exception.

14 *JUDGMENT.*

That said defendant's use and benefit of said plaintiffs in this suit, do have and recover of said garnishee Joseph Farrell, the said sum of two hundred and fifty-seven dollars, in form aforesaid, by the jury found due from him to said defendants, together with their costs and charges in this behalf expended, and have execution therefor.

15 *APPEAL PRAYED.*

16, 17 & 18 *APPEAL BOND*— Filed March 27th, 1860.

18 *BIPL OF EXCEPTIONS*— Filed March 28, 1860.

18 *TRIAL, JURY EMPANELLED, &c.*

19 *ROBERT HERVEY,* witness for plaintiff,

Testified: Am an Attorney and Counsellor at Law; reside in Chicago; know the plaintiff and garnishee Farrell; I first saw him in company with Pearson, one of the plaintiffs, about 12th day of August, A. D., 1859; Pearson called on me with Farrell, to see about claim against Clark & Study; said that Mr. Farrell owed them and had been or was to be garnisheed; Mr. Farrell stated in my presence that he owed Clark & Study $257, in two notes, for flour and horses purchased of them; did not say anything about its being a conditional bargain; said he owed them so much.

Pearson & Co., and Farrell then entered into the following contract drawn by me, and signed by them, as follows:

20 *AGREEMENT*— offered in evidence by plaintiffs,

States that, whereas Farrell is indebted to Clark & Study in $257,

and said Clark & Study are indebted to Pearson & Co., and said Farrell has been garnisheed by said Pearson & Co. as a debtor of Clark & Study, and whereas, it has been agreed between said Pearson & Co. and said Farrell, that said Farrell shall endeavor to obtain all information he can about the whereabouts of said Clark & Study, and shall furnish same to said Pearson & Co , and shall, also, do what he can to enable the said Pearson & Co., to recover the said sum of $257 from him, said Farrell, as such garnishee. Now, if said Farrell shall perform the agreement herein, the said Pearson & Co. shall pay him or allow him to deduct from said amount of $257, fifty-seven dollars for his trouble and services, and a proportionate sum for any less amount that may be received from him than said $257.

21 *ADVERTISEMENT*— Signed by Joseph Farrell offered in evidence by plaintiffs.

21 *LETTER*— Signed by Joseph Farrell offered in evidence by Plaintiffs, and admitted to be genuine.

22 *TELEGRAPHIC DISPATCH*— Signed Joseph Farrell offered in evidence by plaintiffs, and admitted to be genuine.

23 *ON CROSS-EXAMINATION*,

Mr. Hervey testified. I did know afterwards of Pearson and a detective officer being about to start for Clark & Study; Mr. Pearson was in my office after he returned; I understood from him that he got nothing from Clark & Study; I understood, although I do not know, that he said so—that he got from them one of the horses bought by Farrell; the language he used, as near as I can recollect, was we have recovered one of the horses, or a horse; he did not say that it was one of those that Farrell bought from Clark & Study.

DEPOSITION OF WATSON— Offered by defendant Farrell.

23 My name is Samuel H. Watson; am a clerk in a store: I am twenty-one years of age; I reside in Tamorah, Illinois; know all the parties to the suit, except Pearson's partner, Grace.

24 I know of Farrell's having three horses and harness in his possession, and wagon, belonging to Clark & Study; Study brought the

horse to Farrell's house and sold him the horse, wagon and harness, and forty-three barrels of flour; I do not exactly remember the number of barrels. The horses were sold conditionally; he had ten days to redeem them, at one hundred and fifty dollars for the three. Within the time he came and redeemed the horses of me, during Mr. Farrell's absence; he was up here. Mr. Farrell gave me no instructions at all, after he left Tamorah for Chicago, in regard to the redemption of the horses. He knew nothing about it until after I had given up the horses; he was up here at the time, and I wrote to him then. This was about sometime in August; I think about the first of August. These are all the horses that I know of his having any interest
25 in. Mr. Study came and redeemed the horses and took them off; I do not know what he did with them.

ANSWERS TO CROSS INTERROGATORIES.

25 The flour was not bought conditionally, only the horses; I think he paid Clark & Study for the flour at that time, at any rate he paid them some money; he was to give them three dollars and eighty cents per barrel. At that time, I kept Farrell's books; Clark & Study were not credited with the flour on the books; I saw Farrell pay them some money, and give them a note for the balance of the flour, horses and other property; I do not know how much he paid them. The flour
26 was sold and the bargain closed, before the horses were sold; it was all done the same evening. The transaction took place about the first of August; conld not say within two weeks, with any certainty. The conditions of sale were, that Farrell was to give one hundred and fifty dollars for the horses; Clark & Study were to have ten days to redeem them in; if they did not redeem them within ten days, the horses were to belong to Farrell; I heard the bargain. The sale was conditional, because Farrell did not want to buy the horses, but told him he would give that much for them, and give them ten days to redeem them. Farrell thought that was all the horses were worth to him under the circumstances, because he had all the horses he wanted of his
27 own, and it would not justify him to pay more for them. Study represented that he wanted to keep the horses to pay a man he owed in Chicago; he wanted to save them for Pearsons; that he had offered him more than Farrell would give. Do not think there was any written contract as to the sale of the horses. The wagon and harness were not sold conditionally, I think. I think fifty dollars was the price to

be paid for the wagon and harness; the sum was not paid in money (it should not have been for he never got it).

Part of answer in parentheses is objected to by plaintiff's attorneys as not being an answer to the question.

28 He gave his note for the balance, which I think was $250; he also bought some feed stuffs and empty barrels; I think likely they were included in the balance, but do not know certainly. There were about ten barrels of feed, and about two hundred pounds in a barrel. He was to give a dollar a hundred for the feed; do not know what he gave for the barrels; they were worth forty to fifty cents a piece. To the best of my recollection, the amount of the note was $250. I now recollect he gave two notes; one payable in thirty, the other sixty days; 29 this was about first of August. Farrell went to Chicago about two or three days after this. Four or five days after Farrell went away, Study took the horses. I wrote to Farrell the next morning after the horses were taken; after this, he wrote me that he had been garnisheed. They gave me back the notes, and I gave one for $100, payable in sixty days; I do not recollect the date. I was not authorized to sign Farrell's name, and never did so before; but this time, at the advice of his wife, I gave the note.

30 THIRTY-SEVENTH INTERROGATORY. *Why did she advise you to give it? Objected to.*

ANSWER. I told her of the contract and circumstances, and she thought I had better do it. I do not know whether this last note has been paid. Mr. Farrell said I did wrong in giving his note without his consent. He told me he had been garnisheed. Between two and five days after writing him, I received his letter saying he had been garnisheed. It takes a letter about fifteen hours to go from Chicago to Tamorah after it is started.

DIRECT EXAMINATION RESUMED.

The wagon and harness were taken possession of by Clark & Study's creditors. I took possession of them as agent for Mr. Farrell, but 31 they were never removed from the premises of Clark & Study.

JOSEPH CLARK, a Witness for Defendant:

Plaintiffs object to his competency, and desire to examine him as to the same. *Defendants object; objection overruled*, and *Defendants except.*

Plaintiffs object to admissibility of his evidence. Objection overruled. He then testified as follows:

Know Pearson, one of the plaintiffs and Ferrell. I was one of the firm of Clark & Study. Two of the horses which Farrell had, he sold; and one, Pearson got. He got nearly all the price of the other two horses, about $81. I told him it was the money we got from the sale of the horses.

CROSS EXAMINATION.

32 I think the horses were taken away from Farrell on 15th of August; Study told me he took them away then. I did not see them until 17th August; first saw them at St. Charles, Missouri. The horses were taken there by Charles Griffin, a person in our employ.
32 I sold the horses and received the pay for them. I gave Pearson $80 or $81; on reflection, I think it was $79 55. Paid him in presence of T. C. Bradley and Study; took no receipt from Pearson for the money; we tried to settle; I told him I would give him all the money I had, and he said he would send my wife home. My wife and two
33 children were then in St. Louis. My wife handed me $79 55, which I gave to Pearson.

34 Plaintiffs counsel here showed a memorandum to witness, and asked whether the memorandum *truly stated the sum of money paid by witness and Mrs. Study to plaintiff, Pearson, and the disposition he made of it. Defendants' counsel objected; objection overruled and exception taken.* Witness answered, he could not say.

35 Plaintiff's counsel then introduced in evidence, and read to the jury, a receipt signed by Clark & Study.

QUESTION BY DEFENDANT. Witness states that the horse was taken in part settlement of this debt, in which the defendant was garnisheed.

36, *PLAINTIFFS' INSTRUCTIONS,*

1. If the jury believe, from the evidence, that at the time the garnishee, Farrell, was served with process, he was indebted to the defendants, Clark & Study, in the sum of two hundred fifty-seven dollars, or any other sum of money, he cannot exempt himself from liability as such garnishee, by showing that subsequent to such service of process on him, he paid such defendants the amount due them, or redelivered to them the property which they had sold, or delivered to him, and which he had at the time of such service of process, unless he also shows that such payment was so made, or such property so redelivered with the knowledge or assent of the plaintiffs, express or implied.

2. If the jury believe, from the evidence, that at the time the garnishee, Farrell, was served with process, he was in possession of property which he had previously bought on credit from the defendants, Clark & Study, and for which he was then owing, he cannot exempt himself from liability therefor in this proceeding, by showing that the sale was a conditional one and subject to a right of redemption in such defendants, and that they had redeemed such property subsequent to such service of garnishee process.

37 **3.** If the jury believe, from the evidence, that at the time of the service of process of garnishment on Farrell in Chicago, he was in possession of property belonging to the defendants, Clark & Study, that such property was then at Tamora in Perry county, Illinois, and was subsequent to such service re-delivered to the defendants, Clark & Study, by the agent of said Farrell, but that such re-delivery did not take place until after the lapse of more than a reasonable time from the service of such garnishee, in which notice thereof might have been communicated by said Farrell to his agent at Tamora; that the jury should find a verdict for the plaintiffs, and assess their damages at the sum which said Farrell agreed to pay for said property, unless they shall further believe, from the evidence, that with a full knowledge of all the facts, the plaintiffs in the execution obtained in part, satisfaction of their debt, the whole or part of the identical property which he had in his possession, belonging to Clark & Study, or for which Farrell owed Clark & Study.

38 The garnishee process would not render Mr Farrell liable, for what

might be done upon negotiable prommissory notes, given to him by Clark & Study, which notes had not matured, unless the same were delivered up to Farrell, by Clark & Study, before his answer. Where property is not in actual possession of a person served with the garnishee process, but is in the possession of an agent of the garnishee, he is entitled to a reasonable time, to notify his agent and protect the property, before he will be liable for an act of the agent, which may have deprived him of the possession of the same, in the ordinary course of his duty.

Which said charge was given by the Judge, *to each portion of which, the said defendant, Farrell, then and there excepted.*

DEFENDANT'S INSTRUCTIONS.

1. The jury cannot find for the plaintiffs, the value of the horses, if the plaintiffs received them or the proceeds of them, with knowledge, after the garnishee process issued or was served.

Refused.

2. The accepting of the one horse, and of the proceeds of the others, or a portion thereof, is evidence of an assent on the part of the plainttffs, to the action of Farrell's clerk in delivering up the horses, even if it was done after the service of process upon Farrell.

Refused.

39 **3.** Defendant, Farrell, cannot be charged for the value of any property, to the delivery up of which, after service of garnishee process, he assented, or of which he had accepted the proceeds.

Refused.

4. If the jury believe, that there was a conditional bargain between Clark & Study and Farrell, and that it was rescinded even after garnishee process was served upon Farrell, and the plaintiffs, with knowledge, chose to pursue the property, they cannot recover against Farrell.

Refused.

5. The plaintiffs cannot pursue both the property and the garnishee, they must elect which they will follow, and having elected, they are bound by such election.

Refused.

6. If the jury believe, that by any arrangement between the plaintiffs and Farrell, they undertook to pursue and did pursue the property, and recovered the same or the avails thereof, that then, for such property so received or the avails of such as may have been sold, which may have been received by the plaintiffs, knowing that it is the avails of any property in the possession of Farrell at the time of service, Farrell will not be liable.

Rofused.

40 *JUDGE'S CHARGE.*

If the jury believe, from the evidence, that after the service of the garnishee process upon Farrell, he delivered the defendants any portion of the property in his hands, which belonged to the defendants in the execution, and that the plaintiffs pursued and recovered any of such property from the said defendant with knowledge of the facts, then the value of the property cannot be recovered against Farrell. But if the defendant in the execution, sold any of such property without the direction of the plaintiffs in the execution, though the whole or a portion of the money received for such property, may have been paid to them, still the garnishee, Farrell, would not thereby be exonerated from his liability, as garnishee in this case, for so much of said property or indebtedness.

To which the said defendants then and there excepted.

The jury returned the verdict, that they found for the plaintiffs and assessed the damages at $257.

MOTION AND GROUNDS FOR A NEW TRIAL.

The defendant, by his counsel, then moved for a new trial and arrest of judgment, upon the following grounds:

1. The Court erred in giving the various instructions to the jury.

41 **2.** The Court erred in refusing the instructions asked by defendant's counsel.

3. The jury found the verdict directly against the charge of the Court, inasmuch as they found for the full value of the property,

and it was undisputed that one of the horses had been received by plaintiffs and applied on said debt.

4. The verdict was too much.

5. The verdict was against the evidence, and should have been in favor of Farrell.

43 *ASSIGNMENT OF ERRORS.*

1. The Judge erred in refusing to give the jury the 1st, 2d, 3d, 4th, 5th and 6th instructions asked by the said Joseph Farrell.

2. The Judge erred in giving the instructions, so given by him, of his own motion, to the jury.

3. The Judge erred in overruling the motion for a new trial.

4. In that the verdict was directly against the charge of the Court.

5. In that the verdict was against the evidence, and is not supported by it.

6. In that the verdict is too large.

7. The Court erred in excluding evidence offered by said plaintiff in error.

8. The Court erred in admitting improper evidence by the defendant in error.

JR

SUPREME COURT,

Third Grand Division,

GUSTAVUS C. PEARSON AND
JOHN H. F. GRACE
vs.
JOSEPH CLARK AND
WILLIAM H. STUDY.

ABSTRACT OF RECORD.

Filed May 6th 1861
L. Leland
Clerk

CHICAGO:
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1861.

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affiant, liable to execution, and that he has just reason to believe that Joseph Farrell is indebted to the said defendants, and has effects and estate of said defendants in his house, and prays garnishee process against Joseph Farrell.

3 *SUMMONS*— Served 12th day of August, 1859.

4 *ANSWER OF JOSEPH T. FARRELL,* filed 18th, Oct. 1859.

5 States that he had or has no property belonging to the said defendants, or either of them, nor was or is indebted to them or either of them, in any sum which is now in any manner subject to the claim of said plaintiffs, and to the best of his knowledge, information and belief, except about the sum of seventy dollars, which he has ready, to be paid as the Court shall direct.

5 *VERIFICATION OF ANSWER.*

6 *EXCEPTIONS TO THE GARNISHEE ANSWER*, filed 12th November, 1859.

States that said garnishee does not say he had no property belonging to said defendants, nor that he was not indebted to said defendants at the time of the service of the garnishee process. but says that had or has no property belonging to said defendants, or either of them, nor was or is indebted to them, or either of them, in any sum which is *now* in any manner subject to the claim of the said plaintiffs. In which particular the said plaintiffs except to the answer of the said garnishee as evasive and insufficient, and pray a full answer.

HERVEY, ANTHONY & GALT.
Attornies for Plaintiffs.

7 *Exceptions sustained*, and garnishee ordered to answer further.

8 *FURTHER ANSWER OF JOSEPH FARRELL.*

States that at the time of the service of the garnishee process he was in Chicago, two hundred and eighty miles from his place of residence; that at that time he supposes, but does not know personally, that there was in the possession of his clerk, at his residence, three

horses and a saddle and bridle worth about one hundred and fifty-seven dollars which he had purchased conditionally, giving his note,
9 due in sixty days, which purchase was made on or about the 3rd of August last past; that it was agreed between respondent and said Clark and Study that in case they could get more for the horses within two weeks than that price they were to have the right to redeem them, upon the return of said note and payment of expenses about same; that this agreement was known to his said clerk; that on the day of service of said garnishee process, or before he had time to communicate to his said clerk, the said clerk had delivered up said horses, bridle and saddle to said Clark & Study, and received back
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He admits indebtedness about the sum of $70, balance due upon the purchase of certain flour of Clark & Study, which is offset by $18, due for keeping said horses, which was to be applied in that way. Further states upon information and belief that the judgment upon which the garnishee process was founded has been fully paid and satisfied by the defendants, and that he should be discharged from the proceedings; that he had or has no property of the defendants, nor was he or is he indebted to them, or either of them, in any larger or greater sum than above admitted.

VERIFICATION OF ANSWER.

11 *REPLY OF PLAINTIFFS*—filed 13th December, 1859.

States that said answer is not true; that at the time of serving garnishee process they aver said Farrell had in his possession and belonging to said defendants, property and effects to the amount of $257 over and above the $70 which he admits, and this they are ready to verify.

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13 *TRIAL AND VERDICT.*

We the jury find the issues for said plaintiffs, on issues joined with said garnishee Joseph Farrell, and find the amount due from said garnishee Joseph Farrell to the defendants, Clark & Study, to be the sum of $257.

14 *MOTION FOR A NEW TRIAL.*

Motion overruled and exception.

14 *JUDGMENT.*

That said defendant's use and benefit of said plaintiffs in this suit, do have and recover of said garnishee Joseph Farrell, the said sum of two hundred and fifty-seven dollars, in form aforesaid, by the jury found due from him to said defendants, together with their costs and charges in this behalf expended, and have execution therefor.

15 *APPEAL PRAYED.*

16, 17 & 18 *APPEAL BOND*—Filed March 27th, 1860.

18 *BIPL OF EXCEPTIONS*—Filed March 28, 1860.

18 *TRIAL, JURY EMPANELLED, &c.*

19 *ROBERT HERVEY*, witness for plaintiff,

Testified: Am an Attorney and Counsellor at Law; reside in Chicago; know the plaintiff and garnishee Farrell; I first saw him in company with Pearson, one of the plaintiffs, about 12th day of August, A. D., 1859; Pearson called on me with Farrell, to see about claim against Clark & Study; said that Mr. Farrell owed them and had been or was to be garnisheed; Mr. Farrell stated in my presence that he owed Clark & Study $257, in two notes, for flour and horses purchased of them; did not say anything about its being a conditional bargain; said he owed them so much.

Pearson & Co., and Farrell then entered into the following contract drawn by me, and signed by them, as follows:

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23 My name is Samuel H. Watson; am a clerk in a store: I am twenty-one years of age; I reside in Tamorah, Illinois; know all the parties to the suit, except Pearson's partner, Grace.

24 I know of Farrell's having three horses and harness in his possession, and wagon, belonging to Clark & Study; Study brought the

horse to Farrell's house and sold him the horse, wagon and harness, and forty-three barrels of flour; I do not exactly remember the number of barrels. The horses were sold conditionally; he had ten days to redeem them, at one hundred and fifty dollars for the three. Within the time he came and redeemed the horses of me, during Mr. Farrell's absence; he was up here. Mr. Farrell gave me no instructions at all, after he left Tamorah for Chicago, in regard to the redemption of the horses. He knew nothing about it until after I had given up the horses; he was up here at the time, and I wrote to him then. This was about sometime in August; I think about the first of August. These are all the horses that I know of his having any interest
25 in. Mr. Study came and redeemed the horses and took them off; I do not know what he did with them.

ANSWERS TO CROSS INTERROGATORIES.

25 The flour was not bought conditionally, only the horses; I think he paid Clark & Study for the flour at that time, at any rate he paid them some money; he was to give them three dollars and eighty cents per barrel. At that time, I kept Farrell's books; Clark & Study were not credited with the flour on the books; I saw Farrell pay them some money, and give them a note for the balance of the flour, horses and other property; I do not know how much he paid them. The flour
26 was sold and the bargain closed, before the horses were sold; it was all done the same evening. The transaction took place about the first of August; conld not say within two weeks, with any certainty. The conditions of sale were, that Farrell was to give one hundred and fifty dollars for the horses; Clark & Study were to have ten days to redeem them in; if they did not redeem them within ten days, the horses were to belong to Farrell; I heard the bargain. The sale was conditional, because Farrell did not want to buy the horses, but told him he would give that much for them, and give them ten days to redeem them. Farrell thought that was all the horses were worth to him under the circumstances, because he had all the horses he wanted of his
27 own, and it would not justify him to pay more for them. Study represented that he wanted to keep the horses to pay a man he owed in Chicago; he wanted to save them for Pearsons; that he had offered him more than Farrell would give. Do not think there was any written contract as to the sale of the horses. The wagon and harness were not sold conditionally, I think. I think fifty dollars was the price to

be paid for the wagon and harness; the sum was not paid in money (it should not have been for he never got it).

Part of answer in parentheses is objected to by plaintiff's attorneys as not being an answer to the question.

28 He gave his note for the balance, which I think was $250; he also bought some feed stuffs and empty barrels; I think likely they were included in the balance, but do not know certainly. There were about ten barrels of feed, and about two hundred pounds in a barrel. He was to give a dollar a hundred for the feed; do not know what he gave for the barrels; they were worth forty to fifty cents a piece. To the best of my recollection, the amount of the note was $250. I now recollect he gave two notes; one payable in thirty, the other sixty days;
29 this was about first of August. Farrell went to Chicago about two or three days after this. Four or five days after Farrell went away, Study took the horses. I wrote to Farrell the next morning after the horses were taken; after this, he wrote me that he had been garnisheed. They gave me back the notes, and I gave one for $100, payable in sixty days; I do not recollect the date. I was not authorized to sign Farrell's name, and never did so before; but this time, at the advice of his wife, I gave the note.

30 THIRTY-SEVENTH INTERROGATORY. *Why did she advise you to give it? Objected to.*

ANSWER. I told her of the contract and circumstances, and she thought I had better do it. I do not know whether this last note has been paid. Mr. Farrell said I did wrong in giving his note without his consent. He told me he had been garnisheed. Between two and five days after writing him, I received his letter saying he had been garnisheed. It takes a letter about fifteen hours to go from Chicago to Tamorah after it is started.

DIRECT EXAMINATION RESUMED.

The wagon and harness were taken possession of by Clark & Study's creditors. I took possession of them as agent for Mr. Farrell, but
31 they were never removed from the premises of Clark & Study.

JOSEPH CLARK, a Witness for Defendant:

Plaintiffs object to his competency, and desire to examine him as to the same. *Defendants object; objection overruled,* and *Defendants except.*

Plaintiffs object to admissibility of his evidence. Objection overruled. He then testified as follows:

Know Pearson, one of the plaintiffs and Ferrell. I was one of the firm of Clark & Study. Two of the horses which Farrell had, he sold; and one, Pearson got. He got nearly all the price of the other two horses, about $81. I told him it was the money we got from the sale of the horses.

CROSS EXAMINATION.

32 I think the horses were taken away from Farrell on 15th of August; Study told me he took them away then. I did not see them until 17th August; first saw them at St. Charles, Missouri. The horses were taken there by Charles Griffin, a person in our employ.
32 I sold the horses and received the pay for them. I gave Pearson $80 or $81; on reflection, I think it was $79 55. Paid him in presence of T. C. Bradley and Study; took no receipt from Pearson for the money; we tried to settle; I told him I would give him all the money I had, and he said he would send my wife home. My wife and two
33 children were then in St. Louis. My wife handed me $79 55, which I gave to Pearson.

34 Plaintiffs counsel here showed a memorandum to witness, and asked whether the memorandum *truly stated the sum of money paid by witness and Mrs. Study to plaintiff, Pearson, and the disposition he made of it. Defendants' counsel objected; objection overruled and exception taken.* Witness answered, he could not say.

35 Plaintiff's counsel then introduced in evidence, and read to the jury, a receipt signed by Clark & Study.

QUESTION BY DEFENDANT. Witness states that the horse was taken in part settlement of this debt, in which the defendant was garnisheed.

36, *PLAINTIFFS' INSTRUCTIONS,*

1. If the jury believe, from the evidence, that at the time the garnishee, Farrell, was served with process, he was indebted to the defendants, Clark & Study, in the sum of two hundred fifty-seven dollars, or any other sum of money, he cannot exempt himself from liability as such garnishee, by showing that subsequent to such service of process on him, he paid such defendants the amount due them, or redelivered to them the property which they had sold, or delivered to him, and which he had at the time of such service of process, unless he also shows that such payment was so made, or such property so redelivered with the knowledge or assent of the plaintiffs, express or implied.

2. If the jury believe, from the evidence, that at the time the garnishee, Farrell, was served with process, he was in possession of property which he had previously bought on credit from the defendants, Clark & Study, and for which he was then owing, he cannot exempt himself from liability therefor in this proceeding, by showing that the sale was a conditional one and subject to a right of redemption in such defendants, and that they had redeemed such property subsequent to such service of garnishee process.

37 **3.** If the jury believe, from the evidence, that at the time of the service of process of garnishment on Farrell in Chicago, he was in possession of property belonging to the defendants, Clark & Study, that such property was then at Tamora in Perry county, Illinois, and was subsequent to such service re-delivered to the defendants, Clark & Study, by the agent of said Farrell, but that such re-delivery did not take place until after the lapse of more than a reasonable time from the service of such garnishee, in which notice thereof might have been communicated by said Farrell to his agent at Tamora; that the jury should find a verdict for the plaintiffs, and assess their damages at the sum which said Farrell agreed to pay for said property, unless they shall further believe, from the evidence, that with a full knowledge of all the facts, the plaintiffs in the execution obtained in part, satisfaction of their debt, the whole or part of the identical property which he had in his possession, belonging to Clark & Study, or for which Farrell owed Clark & Study.

38 The garnishee process would not render Mr Farrell liable, for what

might be done upon negotiable prommissory notes, given to him by Clark & Study, which notes had not matured, unless the same were delivered up to Farrell, by Clark & Study, before his answer. Where property is not in actual possession of a person served with the garnishee process, but is in the possession of an agent of the garnishee, he is entitled to a reasonable time, to notify his agent and protect the property, before he will be liable for an act of the agent, which may have deprived him of the possession of the same, in the ordinary course of his duty.

Which said charge was given by the Judge, *to each portion of which, the said defendant, Farrell, then and there excepted.*

DEFENDANT'S INSTRUCTIONS.

1. The jury cannot find for the plaintiffs, the value of the horses, if the plaintiffs received them or the proceeds of them, with knowledge, after the garnishee process issued or was served.

Refused.

2. The accepting of the one horse, and of the proceeds of the others, or a portion thereof, is evidence of an assent on the part of the plainttffs, to the action of Farrell's clerk in delivering up the horses, even if it was done after the service of process upon Farrell.

Refused.

39 **3.** Defendant, Farrell, cannot be charged for the value of any property, to the delivery up of which, after service of garnishee process, he assented, or of which he had accepted the proceeds.

Refused.

4. If the jury believe, that there was a conditional bargain between Clark & Study and Farrell, and that it was rescinded even after garnishee process was served upon Farrell, and the plaintiffs, with knowledge, chose to pursue the property, they cannot recover against Farrell.

Refused.

5. The plaintiffs cannot pursue both the property and the garnishee, they must elect which they will follow, and having elected, they are bound by such election.

Refused.

6. If the jury believe, that by any arrangement between the plaintiffs and Farrell, they undertook to pursue and did pursue the property, and recovered the same or the avails thereof, that then, for such property so received or the avails of such as may have been sold, which may have been received by the plaintiffs, knowing that it is the avails of any property in the possession of Farrell at the time of service, Farrell will not be liable.

Rofused.

40 *JUDGE'S CHARGE.*

If the jury believe, from the evidence, that after the service of the garnishee process upon Farrell, he delivered the defendants any portion of the property in his hands, which belonged to the defendants in the execution, and that the plaintiffs pursued and recovered any of such property from the said defendant with knowledge of the facts, then the value of the property cannot be recovered against Farrell. But if the defendant in the execution, sold any of such property without the direction of the plaintiffs in the execution, though the whole or a portion of the money received for such property, may have been paid to them, still the garnishee, Farrell, would not thereby be exonerated from his liability, as garnishee in this case, for so much of said property or indebtedness.

To which the said defendants then and there excepted.

The jury returned the verdict, that they found for the plaintiffs and assessed the damages at $257.

MOTION AND GROUNDS FOR A NEW TRIAL.

The defendant, by his counsel, then moved for a new trial and arrest of judgment, upon the following grounds:

1. The Court erred in giving the various instructions to the jury.

41 **2.** The Court erred in refusing the instructions asked by defendant's counsel.

3. The jury found the verdict directly against the charge of the Court, inasmuch as they found for the full value of the property,

and it was undisputed that one of the horses had been recoived by plaintiffs and applied on said debt.

4. The verdict was too much.

5. The verdict was against the evidence, and should have been in favor of Farrell.

43 *ASSIGNMENT OF ERRORS.*

1. The Judge erred in refusing to give the jury the 1st, 2d, 3d, 4th, 5th and 6th instructions asked by the said Joseph Farrell.

2. The Judge erred in giving the instructions, so given by him, of his own motion, to the jury.

3. The Judge erred in overruling the motion for a new trial.

4. In that the verdict was directly against the charge of the Court.

5. In that the verdict was against the evidence, and is not supported by it.

6. In that the verdict is too large.

7. The Court erred in excluding evidence offered by said plaintiff in error.

8. The Court erred in admitting improper evidence by the defendant in error.

Know all Men by these Presents, That I Joseph Farrell of Tamaroa State of Illinois as principal, and Michael Keeley as security, are held and firmly bound unto Gustavus C. Pearson and John N. F. Grace in the penal sum of Five Hundred Dollars good and lawful money of the United States, for the payment of which, well and truly to be made, the said Pearson and Grace we bind ourselves our heirs, executors and administrators, jointly, severally and firmly by these Presents.

Witness, our hands this 27th day of June A. D. 1860

The Condition of the above Obligation is such, That, whereas the above named Gustavus C. Pearson and John N. F. Grace did, at the January Term of the Superior Court of Chicago held in ~~and for the County of~~ and for the City of Chicago in the State of Illinois, A. D. 1860 recover a judgment against the above bounden Joseph Farrell for the sum of two hundred and fifty-seven Dollars to reverse which said judgment, the said Joseph Farrell has sued out a Writ of Error from the Supreme Court, within and for the Third Grand Division of said State, which Writ of Error is made a Supersedeas. Now if the said Joseph Farrell shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said judgment, and all judgments, costs, interest and damages which the said Supreme Court shall adjudge against the said Joseph Farrell and abide the order and judgment of said Supreme Court in this behalf, then this obligation is to be void, otherwise to remain in full force and effect.

[SEAL.]

Joseph Farrell by C. M. Drury his Att'y in fact [SEAL.]

[SEAL.]

Michael Keeley [SEAL.]

No. 406

SUPREME COURT,

THIRD GRAND DIVISION.

Joseph Hamell

vs.

Gustavus C Pearson et al

SUPERSEDEAS BOND.

Filed July 4 1860

L. Leland Clerk.

13216

Smith & Dewey
Pltff attys

Supreme Court, within and for the Third Grand Division of the State of Illinois —
April Term A. D. 1861.

Joseph Farrell.
Garnishee.
vs.
Gustavus C. Parsons
& John F. H. Grace
} Error to Cook County.

It is hereby stipulated and agreed by and between the undersigned, the respective Attorneys of the parties to the above entitled cause, that the same shall be submitted to the decision of said Court at the above term thereof, on written or printed briefs to be filed by said Attorneys respectively, with the Clerk of said Court during said term.
Chicago April 19th 1861.

Myron C. Parsons.
Atty's of said Defts
E. S. Mills

92

Joseph Farell
vs. Garnishee
Gustavus C. Pearson
et al

Stipulation

92
Filed April 22, 1861
L. Leland
Clerk

STATE OF ILLINOIS, } ss.
SUPREME COURT,

The People of the State of Illinois,

To the Clerk of the Superior Court of Chicago for the County of Cook Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Superior Court of Chicago Cook County, before the Judge thereof, between Gustavus C. Pearson & John H. Grace

plaintiff, said Joseph Farrell garnishee of Joseph Clark and William H. Study

defendant, it is said manifest error hath intervened, to the injury of the aforesaid Joseph Farrell

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

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 9th day of July in the Year of Our Lord One Thousand Eight Hundred and Sixty

L. Leland
Clerk of the Supreme Court.
by J. D. Rice Deputy

92

Joseph Farrell

No. vs.

Gustavus C. Pearson

WRIT OF ERROR.

This Writ of Error is made a Supersedeas, and as such is to be obeyed by all concerned.

L. Leland

Clerk.

By L. B. Rice D. Clerk.

FILED July 4 A. D. 186

L. Leland

Clerk.

Supreme Court

Joseph Fanell
Garnishee & Pff in Error
vs
Gustavus C. Pearson Etal
Defts in Error

Application for a writ of Error & a Supersedeas.

The appeal in this Case which was perfected on 27th March was dismissed on account of the record not being filed in same. An application is now made for a writ of Error and Supersedeas.

The Court will see by the record that at the time of the service of Garnishee process that Fanell had property Conditionally in his hands belonging to the Defendants in Execution. That Negotiations took place at Chicago (Fanell residing at Jamaica) (180 Miles distant) between Fanell and the Plaintiffs in regard to the Matter aforewards and before Fanells return home. a Clerk of Fanell had returned the property to defendants Fanell telegraphed to Plaintiffs and wrote them a letter informing them of the fact and advising them to pursue the property and they accordingly started in pursuit recovered one of the horses actually applied it upon the debt, received a large portion of the Money for the sale of the others knowing it to be such.

The Jury under the instructions of the Court gave a verdict for the whole value of the property against Farrell. In other words he is obliged to pay plaintiffs for the property which they have taken and enjoyed.

The last instructions asked by Farrell was as claimed by us improperly refused and to that we would particularly call your attention.

The instruction given by the Court of his own motion is erroneous in that he charges the jury, that if any of the property had been sold and the avails taken by plaintiffs with knowledge of the fact still Farrell would be liable,

The jury also included in their verdict the value of the property which was actually returned and applied upon the debt, and about which there was no dispute and against the charge of the judge,

The name of Michael Keeley whose affidavit accompanies the record is proposed as surety

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The jury also included in their verdict the value of the property which was actually returned and applied upon the debt, and about which there was no dispute and against the charge of the judge,

The name of Michael Keeley whose affidavit accompanies the record is proposed as surety

406

Supreme Court

Joseph Farrell
& another &c
vs
Gustavus C Pearson
Etal

Abstract & Suggestions

Filed May 21. 1860
L. Leland
Clerk

No abstract

Smith & Dewey
Pltffs Attys

1861

406

Supreme Court

Joseph Farrell
& another &c
vs
Gustavus C Pearson
Etal

Abstract & Suggestions

Filed May 21. 1860
L. Leland
Clerk

No abstract

Smith & Dewey
Pltffs Attys

1861

State of Illinois }
Cook County } ss

Michael Reiley being duly sworn doth depose and say that he is a resident of the City of Chicago County & State aforesaid.
And further saith that he is worth the sum of One thousand Dollars over and above all liabilities of whatever nature or description & exclusive of property exempt from execution, which said Property consists of 320 acres of Land situate and lying in Jersey County, Illinois. being free and clear from all encumbrances of any nature whatsoever

Michael Reiley

Subscribed and Sworn to before me at Chicago Illinois this 10th day of May 1865

Philip A Noyes
Notary Public

PHILIP A. NOYES NOTARY PUBLIC CHICAGO ILL.

~~486~~ 92

Supreme Court

Joseph Farrell
& ano
vs
Gustavus D Ranson
et al

Affidavit of justification

Filed May 21, 1860
L. Leland
Clerk

C. D. Smith & Co
Pltffs attys

Know All Men by these Presents That

I have Constituted and appointed and by these presents do Constitute and appoint Edward M Dewey Esqr, My true and lawful Attorney with full power and Authority for him in My name as My Act and deed, to Make Execute and deliver a Certain bond for a Supersedeas in the Case of Farrell garnishee &c as Gustavus C Pearson &c Error to the Supreme Court at Ottawa from the Superior Court of Chicago, Illinois in the penal sum of Five Hundred Dollars—

And generally giving to said Attorney full power and Authority to do, Execute and finish all things in the premises, in as full ample and Complete a Manner, as I might do if personally present

Hereby ratifying and Confirming all things lawfully done by My said Attorney by Virtue hereof

In Testimony Whereof I have hereunto set My hand and seal this 21th day of June A.D 1860

In Presence of
T. B. Andlee

Joseph Farrell Seal

Supreme Court

92

Joseph Farrell
garnishee

vs

Gustavus C Pearson
Et al

Power of Atty

Filed July 4 1860
L. Leland
Clerk

Smith & Denny
Plffs Attys

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

To the Sheriff of the County of ..... Greeting:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Superior ~~Court~~ Court of Chicago Cook County, before the Judge thereof, between Gustavus C. Pearson & John H. F Grace. ——

plaintiffs and Joseph Farrell garnishee of Joseph Clark and William H. Study ——

defendant &c., it is said that manifest error hath intervened, to the injury of the said Joseph Farrell ——

—— 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 ~~Gustavus C. Pierson~~ Gustavus C. Pearson and William H. Study

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

—— notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 14th day of March in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

We hereby accept service of the within writ of Scire Facias this 15th day of March A.D. 1861.

Gustavus C. Pearson
John H. F. Grace
By Myron C. Parsons their Atty

92

Joseph Farrell

No. vs.

Gustavus C. Pearson and William H. Stutz

SCIRE FACIAS.

Filed Mch 16. A. D. 1861

L. Leland Clerk.

(Copy)

Supreme Court. Third Grand Division

Joseph Farrell
Garnishee of Joseph
Clark & Wm H. Study
Plaintiff in Error

vs

Gustavus C Pearson Exr
John H Hale
defts in Error

Error
To
Superior Court of Chicago

Abstract of Case

On the Eleventh day of August A.D 1857 the plaintiff Gustavus C. Pearson by his Attorney filed in the office of the Clerk of said Court his Certain affidavit for Garnishee process setting forth the recovery of a judgment in said Court against the above named defendants. for the sum of Seven hundred and ninety five dollars and Ninety Cents. That an Execution had been duly issued on said judgment. and returned by the Sheriff of Cook County to whom the same was directed. No property found, and that there was no property to affiants knowledge belonging to said defendants liable to Execution — And that affiant had just reason to believe that Joseph Farrell was indebted to said defendants and had effects and Estates of said defendants in his hands —
Whereupon the Clerk of said Court on the day and year aforesaid issued a certain writ of Summons to the Sheriff of Cook County Commanding

him that he summon Joseph Fanell personally to be and appear before the Superior Court of Chicago on the first day of the next term thereof. which was holden on the first Monday of September next, to answer unto said plaintiffs as Garnishee of said defendants, as to the rights. Credits. Effects property or Money in his hands belonging to said defendants —
Which said process was served on Joseph Fanell as Garnishee on the 12th day of August 1859
On the Eighteenth day of October 1859. Joseph Fanell filed his Certain Answer - which was excepted to, by the plaintiffs Attorney on the 12th day of November in the year aforesaid — which was sustained Whereupon Joseph Fanell by his Attorney On the 25th day of November in the year aforesaid filed his Certain further Answer, as follows,
That at the time of the service of the Garnishee process he was in the City of Chicago about two hundred and Eight Miles from Tamaroa his place of residence. That at the time. he supposes but does not know personally that there was in the possession of his Clerk or Agent at Tamaroa three horses, and a saddle and bridle worth about One hundred and fifty seven Dollars, which he had on or about the third day

of August last past purchased of said Clark & Study on the Condition, if that in case they could get more for the horses within two weeks: on delivering to him, his Certain negotiable promissory note payable at sixty days from date given in payment therefor, and paying the Expenses. they could redeem said horses, that this agreement was known to his agent, or Clark, and that before he had time to Communicate, with his said Clark, the said Clark had delivered up said horses, bridle and saddle to said Clark & Study and received back the note of said Farell, in pursuance of said agreement, and that it was done without the knowledge and or Consent of said Farell.

That as soon as he discovered the fact he Communicated the same to said Plaintiffs and that they immediate Commenced pursuit of the said horses as the property of Clark & Study. that said plaintiffs obtained one of said horses & advertised it for sale as the property of said Clark and Study. and also obtained a large portion of the proceeds of the other two horses. he admits that he was indebted in about the sum of seventy dollars being the balance due upon the purchase of certain floor of said Clark & Study. which he claims should be reduced by an offset of Eighteen dollars then due for keeping said horses. which was to be applied in that way

and that he was not indebted to Clark & Study or either of them in a larger sum than above admitted -
On the 13th day of December 1859 the plaintiffs by their Attorneys filed their Certain Reply to Answer denying the same. Whereupon on the 3d day of January A.D. 1860 issue was joined. and a jury was duly Empannelled. who after hearing Evidence and arguments of Counsel and instructions of the Court retired and afterwards Came into Court submit their verdict & say they find issue for said plaintiffs on issues joined with said Garnishee Joseph Fanell and find the Amount due from said Garnishee Fanell to the defendants Clark & Study to be the sum of two hundred and fifty seven Dollars -
Thereupon said Garnishee Joseph Fanell submits his Motion for a new trial -
Afterwards on the 25th day of February A.D. the said defendants Motion for a new trial was over ruled and judgment ordered against said Garnishee Fanell for said sum of two hundred and fifty seven Dollars, and Costs. And that plaintiffs have Execution therefor And thereupon said Joseph Fanell having Entered his Exceptions prays an appeal to the Supreme Court, which was allowed on filing bond in the penal sum of

(2)

of Three hundred and fifty Dollars with security to be approved by a Judge of the Court and to be filed within ten days.
Afterwards on the 20th day of March 1860 on Motion of Garnishee Joseph Fauell. it is ordered that time to file bond and bill of Exceptions on appeal taken herein be and is hereby Extended twenty days, this order Entered nunc pro tunc of 5th March instant—
Afterwards on the 24th day of March 1860 On Motion of Garnishee Joseph Fauell it is ordered that time to file bond and bill of Exceptions be Extended until Wednesday next—
Afterwards on the 27th day of March 1860 Joseph Fauell filed his certain Appeal Bond, ~~[illegible]~~ approved by Grant Goodrich judge of Superior County Chicago
Afterwards on the 28th day of March 1860 Joseph Fauell filed his Certain bill of Exceptions. as follows:
On the 3d day of January A.D. 1860 Before the Hon. Grant Goodrich Judge of said Court, ~~issue joined &c~~ And a jury duly Empannelled came the said Plaintiffs & the said Fauell Garnishee upon the issue joined herein on the Answer of the Above Named Garnishee—
The plaintiffs to maintain and sustain the issues on their part produced and Caused to be sworn as a witness

Robert Henry. Who testified. As follows, I am an Attorney and Counsellor at Law. reside in Chicago I knew the plaintiffs and the Garnishee Fanell. I first saw him in Company with Pearson One of the Plaintiffs. It was about the 8th day of August A.D 1859. Mr Pearson called with Mr Fanell to see about Claim against Clark & Study, said that Mr Fanell owed them. And had been or was to be garnished by Fanell stated in My presence. that he owed them. Clark & Study, $257. in two notes for flour and horses. purchased of them, did not say anything about its being a Conditional bargain. said he owed them so much.
Pearson & Co and Fanell then Entered into the following Contract drawn by me and signed by them as follows

19

Memorandum of Agreement between G.A. Pearson & Co of Chicago and Joseph Fanell of Tamaroa Perry Co.

Whereas Fanell is indebted to Clark & Study late of Pinckneyville Ills in $257. on two Notes One for $100. due 4/ Sept. and the other for $157. due 4/ Oct 1859. And whereas said Clark & Study are indebted to Pearson & Co. in a large sum. And whereas said Fanell has been garnished by Pearson & Co. as a debtor of said Clark & Study. And whereas it has been agreed between said Pearson & Co and said Fanell. that Fanell shall endeavor to obtain any information he can

about the present Whereabouts of said Clark & Study. and shall furnish them said Pearson & Co and shall also do what he Can to Enable the said Pearson & Co recover the said sum of $257. from him said Farell as such garnishee. Now if said Farell shall furnish said Pearson & Co all the information he obtains about said Clark & Study; Whereabouts; and should succeed in enabling the said Pearson & Co to Collect of him the said $257. then said Pearson & Co shall pay said Farell or allow him to deduct from said Amount of $257. fifty seven dollars for his trouble & services and a proportionate sum for any less amount. than may be received from him. than said $257.

Chicago 2 day 1859

(Sigd) G. C. Pearson
Joseph Farell

Which was here offered in Evidence, It was drawn by me and signed in my presence. Mr Farell also then signed the Advertisement as follows

"Caution". All persons are Cautioned against purchasing or negotiating two promissory notes, describing them & stating he had been garnisheed by Creditors of Clark & Study. on account of his indebtedness to them,

Which was also here introduced in Evidence;

The Plaintiffs then introduced in Evidence the following letter and Telegraph Dispatch, which were admitted to be Genuine —

Cincinnati Aug 17th 1869

Mr S C Pearson

Sir on my arival here I found a letter from my young man stating that Study had been there and had redeemed the three horses which he sold me. I bought them from him with the condition that if he paid me my money back and then keeping outside of two weeks, he could take them back; When I saw you I had no idea that he would redeem them. but while I was away he goes to young Watson tells him a Cock & Bull story, I suppose and talks him out of the horses and returns to him my notes which I gave him, as soon as I received the information I telegraphed you that I thought he had gone to St Louis. to make sale of them. And if you would start after him you might Catch him and the horses there,

Western Union Telegraph Company

To S C Pearson & Co

284 Lake St. Cincinnati 18. 1869

I have just learned Study has redeemed the three horses, which privilege he had. I think you can Catch him in St Louis. he left Tamaroa Monday Morning before day.

Which were admitted & the from said Pearson & said Plaintiff & by them introduced & read in Evidence to the jury

(29

On Cross Examination he testified. he did not know of Pearson & a Detective Officer being about to start for Clark & Study - that after Pearsons return he understood from him. that he got nothing from Clark & Study. he understood that but does not know as he said so, that he got from them one of the horses bought by Fanell, the language he used as near as does recollect was. We have recovered one of the horses, or a horse, he did not say that it was one of that Fanell bought from Clark & Study

The Defendant to maintain the issue on his part introduced the deposition of Watson as follows. that he is twenty one years of age, is Clerk in a store. knows all the parties except Pearson. knows of Fanells having three horses harness & wagon in his possession belonging to Clark & Study. Study sold Fanell three horses. wagon & harness and forty three barrells of flour. but he does not exactly remember the number of barrells. The horses were sold conditionally, he had ten days to redeem them at $150. he redeemed the horses during Fanells absence - Mr Fanell gave him no instructions after he left Jamaica in regard to the redemption of the horses. That Fanell knew nothing of his having delivered up the horses till I wrote him. about the first of August: Mr Study redeemed the horses & took them off. do not know what he did with them -

Cross Interrogatories

The flour was not bought conditionally, only the horses

I think he paid for the flour. he paid them some money. he was to give $3.80 per barrell for the flour. Kept Farells books. Clark & Study were not credited with the flour. saw Farell pay them some Money and give them a note for the balance of the flour horses & other property — the horses & flour were sold the same Evening. But the flour was sold & the bargain Closed before the horses were sold — it was about the 12th of August. Farell was to give One hundred & fifty dollars for the three horses. Clark & Study were to have ten days to redeem them in. if not redeemed in said time they were to belong to Farell. Heard the bargain. Farell did not want to buy the horses. but offered them that price giving them time to redeem — That was all the horses were worth to Farell as he had all the horses he wanted of his own. Study represented to Farell that he wanted to keep those horses to pay Pearson of Chicago. that he had offered him more for them & that he & Clark owed Pearson or something of that kind. the wagon & harness were not bought conditionally I think he was to pay $80 for wagon & harness, wagon was not paid for. because he never got it, he gave Clark & Study a note for the balance about $250. he bought ten barrells of feed Stuff, weighing about 200 pounds Each & was to pay One dollar a hundred The barrells were worth 45c or 50c a piece but I do not know what he paid for the feed & Farells Whether they were included in the balance, he gave them two Notes one for One hundred & fifty dollars One payable in thirty days & one in sixty days from date, they were ordinary promissory note dated about

the first of August, Farell went to Chicago in two or three days & Study took the horses four or five days after Farell left. Farell wrote he had been garnished after I wrote him I had given up the horses which was the next morning on delivering up the horses to Study he gave me both of the notes & I gave him one for $100. in place of them — it was payable sixty days from date. I donot recollect the date. I had no authority from Farell to sign the note, signed it by advise of his wife. — he told me he was garnished & Farell said I done wrong in ~~doing it~~ giving his note without his consent. it was from two to five days after I wrote Farell. before I got his letter stating he was garnished. it takes a letter about fifteen hours to go from Jamaica to Chicago, after it gets started;

Direct Examination resumed —

The wagon & harness referred to were taken by the Creditors of Clark & Study. I took possession of them as agent of Farell. but they were never removed from premises of Clark & Study —

The Defendant Farell to maintain the issue on his part then produced Dolph Clark as a witness. who was sworn in Chief — plaintiff objected to his Competency as a witness and desired to Examine him as to the same, defts objected on the ground he had been sworn in Chief to which Pltffs Counsel objected because he was a party to the original suit Court overruled objections & defendant Excepted, he then testified he was one of the defendant in the original suit & judgment in which the garnishee

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pwcp issued. plaintiffs Counsel objects to admissibility of witness testimony, 1st Because of his being a party to the record 2nd Because of his interest in Event of suit, Court overruled objection & allowed witness to testify. To which the plaintiff Excepted Witness then testified as follows; I know Pearson one of the plaintiffs and Farrell I was one of the firm of Clark & Study Two of the horses which Farrell had we sold, and Pearson got nearly all the price of the other two horses about $81. I told him that it was the money we got from the sale of the horses;

Cross Examination

Study told me he took the horses away the 15th August, I did not see them till the 17th of August. I first saw the horses at St Charles Missouri they were taken there by Charles Griffin a person in our Employ. the two horses were sold on the 23rd August at St Louis. both to same man for $125. dont know name of purchaser. One of the horses was Six and the other Eight years old. they were good horses. we paid $100. a piece for them. I sold the horses and received the pay for them. I paid Pearson $79.55. at Blue Island or Illinoistown I paid it on the 25th August in the presence of J. C. Bradley & Study. I took no receipt from Pearson for the money. We tried to settle, I told him I would give him all the money I had & he said he would send my wife home, My wife & Children were then at St Louis; My wife & Children were going to Middleton Pa. I did not pay their fare Pearson told me he paid their fare,

My wife remained at Illinoistown 2 days She had some money, Pearson told her to keep it. Bradley arested me & Study at that time, the same day he started with us to Chicago Study's wife & child were also at Illinoistown My wife & children & Study's wife & child came to St Louis after us. They disposed of their furniture before going to St Louis, Mrs Study & Child went to Wabash Indiana after Study & I had been arested, She was present when me was arested, Mrs Study gave Pearson money to buy her tickets to Wabash. She paid him the money with her own hands, I saw her take it out of her purse. My wife handed me the $69.50 of the $79.50 the other ten I had, both our wives were present at the time the money was paid Pearson. Pearson paid Part of Mrs Study's fare from Illinoistown to Chicago, I think the fare was $20, Pearson paid $10. and Bradley $10, Plaintiffs Counsel here showed witness the following Memoranda

C. P. Bradley Dr To Pearson

To Expenses of Policemen to St Charles $3.00
" Tickets. fare R R of C & Study 15.00
" pd Bradley Expenses & C & S at Illinoistown 3.00

Received Mrs Clark $69.
Mrs Study 12.50
79.50

Ticket Mrs Clark 52.00
27.50

Mrs Study's tickets 10.
17.50

Fare Clark & Study 15.00
Mrs Study's Hotel bill 2.50

and Asked witness whether it was not in the hand writing of the plaintiff Plaintiff. Witness Answered. he ~~could~~ he had received letters from him & that the Memoranda looked like his writing. he could not state whether the memoranda showed the Amount of Money paid Pearson or the sum paid by him for the tickets and Expenses of Mrs Clark & Study ~~Connelly~~ or Not.

Cross Examination Continued.

I delivered the horse to Pearson. Plaintiff Counsel here showed the witness the following receipt.

"Received of S. C. Pearson One hundred Dollars being in full for a Bay horse bridle & saddle. the title of which I guarantee, this 24th day of Aug St Louis Mo 1857 "Clark & Study"

this receipt was signed by me. I think Pearson wrote it. I am acquainted with his hand writing. have seen a good many of his letters. it resembles his hand writing I think Bradley Mine & Studys Hotel bill at Illinois town. I paid Bradley $8. when he searched me, My wife told Pearson the Money she handed me was all she had, Pearson went to St Louis to order Mrs Clark & Studys furniture & he returned I gave $70. of the proceeds of the two horses sold, to my wife.

Cross Examination Not Closed. Plaintiff Counsel then, introduced in Evidence & read to the jury the receipt above mentioned. Du reply to a question by

Defendants Counsel, witness stated that the house was taken in part settlement of this debt. in which the defendant was garnished. The forgoing was all the testimony and Evidence given upon the trial of the said Cause -

The Counsel of Farrell thereupon requested the said Judge to Charge the Jury, as follows,

If the jury believe that there was a conditional bargain between Clark & Study and Farrell. and that it was rescinded even after garnishee process was served upon Farrell. And the plaintiff with knowledge chose to pursue the property, they cannot recover against Farrell -

The Plaintiff cannot pursue both the property and the garnishee. They must Elect which they will follow. And having Elected they are bound by such Election -

If the Jury believe that by any agreement between the plaintiffs & Farrell. they undertook to pursue. and did pursue the property. and recovered the same or the avails thereof, that then for such property so received. or the avails of such. as may have been sold. which may have been received by the plaintiffs knowing that it is the avails of any property in the possession of Farrell at the time of purchase. Farrell will not be liable -

Each of which the said Judge refused to which refusal the said defendant

then and there Excepted -
The Judge of his own motion Charged the jury as follows,
If the jury believe from the Evidence that after the service of the Garnishee process upon Fanell. he delivered up to defendants any portion of the property in his hands which belonged to the defendants in Execution and that the plaintiffs pursued & recovered any of such property from the said defendants. with knowledge of the fact then the value of such property Cannot be recovered against Fanell. But if the defendants in Execution sold any of such property without the direction of the plaintiffs in the Execution though the whole or a portion of the money received for such property may have been paid to them, still the Garnishee Fanell would not thereby be Exonerated from his liability as Garnishee, in this Case, for so much of said property or indebtedness to which the said defendants then and there Excepted. The said cause was then submitted to the jury who retired and after Consultation returned their verdict into Court. that they found for the plaintiffs and assessed the damages at $ 237.00 the said defendant by his Counsel then moved for a new trial and arrest of judgment upon the following grounds.
1st the Court Erred in giving the various instructions of the jury
2d the Court Erred in refusing the instructions asked by defendants Counsel.

3d the Jury found the verdict directly against the Charge of the Court inasmuch as they found for the full value of the property. and it was undisputed that one of the horses had been returned by plaintiffs & applied upon said debt.
4th The verdict was too much —
5th the verdict was against the Evidence & should have been in favor of Farell which Motion was overruled on the 25th day of February A.D. 1880 judgment rendered
To all which rulings and decisions of the Court the Counsel for said Farell then and there duly excepted —

Smith & Dewey
Attys for Plff in Error

Supreme Court

~~406~~ 72

Joseph Faull
garnishee

vs

Gustavus C Pearson
etal

Abstract

Smith & Denver
Plffs Atty

SUPREME COURT,

WITHIN AND FOR THE THIRD GRAND DIVISION OF THE STATE OF ILLINOIS.

JOSEPH FARRELL, *Garnishee, etc.*,
vs.
GUSTAVUS C. PEARSON AND JOHN H. F. GRACE.

AMENDED ABSTRACT OF THE RECORD.

August 11th, 1859, Gustavus C. Pearson, one of the defendants in error, filed his affidavit in the Superior Court of Chicago, setting forth that defendants in error had recovered Judgment in said Court against said Joseph Clark and William H. Study for $795.80, on which execution was duly issued to Sheriff of Cook County, and by him returned "*No property found.*"

That said Clark and Study have no property in their possession liable to execution within the knowledge of said affiant, and that he believes that Joseph Farrell is indebted to said Clark and Study, and has effects, etc., belonging to them.

Whereupon, Summons issued against said Farrell as Garnishee, which was served on him August 12th, 1859.

October 18th, 1859, said Farrell filed his answer, stating that, having been summoned as garnishee, he, "for answer saith: That he has or had no property belonging to the said defendants or either of them, nor was, or is, indebted to them, or either of them, in any sum which is *now* in any manner subject to the claim of the said plaintiffs to the best of his knowledge, information and belief, except about the sum of seventy dollars which he now has ready to be paid as this Court may direct."

November 12th, 1859, plaintiffs below filed their exceptions to said Farrell's answer, because the same does not say that he had no property belonging to the original defendants, nor that he was not indebted to them *at the time of the service of garnishee process, etc.*

November 16th, 1859, exceptions sustained and Farrell ordered to answer over.

November 25th, 1859, Farrell filed his further answer, therein stating—"That at the time of the service of the garnishee process upon him, he was in the city of Chicago, which is about two hundred and eighty miles from Tamaroa, his place of residence; that at that time he supposes, but does not know personally that there was in the possession of his clerk or agent, at Tamaroa, three horses and a saddle and bridle, worth about one hundred and fifty-seven dollars, which he had purchased conditionally, giving his negotiable promissory note to that amount, due in sixty days therefrom, which purchase was made on or about the third day of August last past; that it was agreed between said respondent and said Clark and Study that in case they could get more for the horses within two weeks than that price, they were to have the right to redeem them upon the return of said note and payment of the expenses about the same, and that this agreement was known to his said agent or clerk; and this respondent says, that on the day of service of said garnishee process upon him, or the next day thereafter, as he is informed and verily believes true, but that at any rate before he had time to communicate with his said clerk, the said clerk had delivered up said horses, bridle and saddle, to said Clark & Study, and received back the note of this respondent in pursuance of said agreement, and that this was done without the knowledge or consent of this respondent; and this respondent further saith, that as soon as he discovered the fact he communicated the same to the said plaintiffs, and they immediately commenced pursuit of the said horses as the property of said Clark & Study; that said plaintiffs obtained one of said horses and advertised it as the property of said Clark and Study, and also obtained a very large portion of the proceeds of the other two horses; and this respondent further says that he admits that he was indebted in about the sum of seventy dollars, being the balance due upon the purchase of certain flour of the said Clark & Study, which balance this respondent claims should be reduced by an offset of eighteen dollars then due for keeping said horses, which was to be applied in that way; and this respondent further says he is informed and verily believes true that the judgment on which the garnishee

process was founded in this case has been fully paid and satisfied by the said defendants, and that he should be discharged from the proceedings, and that he had or has no further or other property of the said defendants, Clark & Study, or either of them, nor was he, nor is he, indebted to them or either of them in any larger or greater sum than above admitted."

11 December 13th, 1859, plaintiffs below filed their replication to said answer, averring the same not to be true; that at the time process was served Farrell had in his possession and under his control property and effects belonging to said Clark
12 and Study to the amount of $250, over and above the amount of $70, admitted to be due in his answer; and that, as to Farrell's clerk letting the property go out of Farrell's possession after the service of process on him and before he could communicate the fact, said plaintiffs know nothing, but leave said Farrell to prove the same, and they believe said Farrell has been conspiring with said Clark & Study to defraud them, etc.

TRIAL AND VERDICT.

13 "We the jury find the issues for said plaintiff on issues joined with said garnishee Joseph Farrell, and find the amount due from said garnishee Joseph Farrell to the defendants Clark and Study, to be the sum of two hundred and fifty-seven dollars."

MOTION FOR NEW TRIAL.

14 Motion overruled and exception.

JUDGMENT.

14 "Therefore it is considered said defendants Joseph Clark and William Study use and benefit of said plaintiffs in this suit, do have and recover of said garnishee Joseph Farrell, the said sum of two hundred and fifty-seven dollars in form afore-
14 said, by the jury found due from him to said defendants, together with their costs and charges in this behalf expended, and have execution therefor."

Appeal Prayed.

16,17&18 *Appeal Bond.*—Filed March 27th, 1860.

18 *Bill of Exceptions.*—Filed March 28th, 1860.

19 Bill recites impannelling of Jury, etc., and the calling of
19 Robert Hervey, witness for plaintiff, who testified:

19 "I am an Attorney and Counsellor at Law; reside in Chicago; I know the plaintiffs and the garnishee Farrell; I first saw him in company with Pearson, one of the plaintiffs; it was about the 12th day of August, 1859; Mr. Pearson called

with Farrell to see about claim against Clark and Study; said that Mr. Farrell owed them, and had been, or was to be, garnisheed; Mr. Farrell stated in my presence that he owed them, Clark and Study, $257, in two notes, for flour and horses purchased of them; did not say anything about its being a conditional bargain; said he owed them so much; Pearson & Co. and Farrell then entered into the following contract, drawn by me, and signed by them, as follows:

"Memorandum of agreement between G. C. Pearson & Co., of Chicago, and Joseph Farrell, of Tamaroa, Perry Co.:

20 Whereas, Farrell is indebted to Clark and Study, late of Pinckneyville, Ills., in $257, on two notes, one for $100, due 4th & 7th September, and the other for $157, due 4th & 7th October, 1859, and whereas said Clark and Study are indebted to Pearson & Co. in a large sum, and whereas, said Farrell has been garnisheed by Pearson & Co., as a debtor of said Clark and Study, and whereas, it has been agreed between said Pearson & Co. and said Farrell that Farrell shall endeavor to obtain any information he can about the present whereabouts of said Clark and Study, and shall furnish same to said Pearson & Co., and shall also do what he can to enable the said Pearson & Co. to recover the said sum of $257 from him, said Farrell, as such garnishee. Now if said Farrell shall furnish to said Pearson & Co. all the information he obtains about said Clark and Study's whereabouts, and should succeed in enabling the said Pearson & Co. to collect of him the said $257, then said Pearson and Co. shall pay said Farrell, or allow him to deduct from said amount of $257, fifty-seven dollars for his trouble and services, and a proportionate sum for any less amount that may be recovered from him than said
20 $257.

Chicago, 12th August, 1859.

(Signed) G. C. Pearson & Co.
Joseph Farrell."

21 Which was here offered in evidence; it was drawn by me, and signed in my presence; Mr. Farrell also then signed the advertisement as follows:

21 "Caution:—All persons are cautioned against purchasing or negotiating two promissory notes dated 3d or 4th of August, 1859—one for $100, payable in 30 days, and the other for $157, payable in 60 days, made by me, and payable to Clark & Study or order, dated at Tamaroa, Perry County, Illinois, as I have been garnisheed by creditors of said Clark & Study, on account of my said indebtedness to them.

Tamaroa, Illinois, 12th August, 1859.

(Signed) Joseph Farrell."

Which was also here introduced in evidence.

The plaintiffs then introduced and read in evidence the following letter and telegraph dispatch, which were admitted to be genuine.

21 "Cincinnati, Aug. 17th, 1859.

Mr. G. C. Pearson:

Sir: On my arrival here I found a letter from my young man stating that Study had been there and had redeemed the three horses which he sold me. I bought them from him with the condition that if he paid me my money back and their
22 keeping inside of two weeks, he could take them back. When I saw you, I had no idea that he would redeem them; but while I was away, he goes to young Watson—tells him a cock-and-bull-story, I suppose; and talks him out of the horses and returns him my notes which I gave him. As soon as I received the information, I telegraphed you that I thought he had gone to St. Louis to make sale of them, and if you would start after him, you might catch him and the horses there; while I write now, I suppose you are on your way to St. Louis after him in consequence of the dispatch I sent; the dispatch cost me $2 40. On receipt of this, please let me know if you hear anything. I will write you as soon as I get home, if I hear anything. Your Obd't,

(Signed) JOSEPH FARRELL."

Telegraphic Dispatch.

"To G. C. PEARSON & Co.,

234 La Salle Street.

22 Cincinnati, 16th, 1859.

I have just learned that Study has redeemed the three (3) horses, which privilege he had. I think you can catch him in St. Louis. He left Tamaroa Monday morning before day.

JOSEPH FARRELL."

23 The foregoing letter and dispatch introduced in evidence and read to Jury.

23 On his cross-examination, the witness Hervey testified: I did know afterwards of Pearson and a detective officer being about to start for Clark & Study. Pearson was in my office after he returned. I understood from him that he got nothing from Clark & Study. I understood, although I do not know that he said so, that he got of them one of the horses bought by Farrell. The language he used, as near as I can recollect, was—we have recovered one of the horses, or a horse. He did not say it was one of the horses that Farrell bought from Clark & Study.

On behalf of the defendant, Farrell, was introduced in evidence first:

23 The deposition of Samuel H. Watson, who testified: I am clerk in a store; am twenty one years of age; reside in Tamaroa, Ills.; know all the parties except plaintiff Grace; know of Farrell having in his possession three horses and harness and wagon belonging to Clark & Study. Study brought the horses to Farrell's house and sold him the horses and wagon and harness, and forty-three barrels of flour. I do not exactly remember the number of barrels. The horses were sold conditionally. He had ten days to redeem them at one hundred and fifty dollars for the three. Within the time he came and redeemed the horses of me during Mr. Farrell's absence; he was up here. Mr. Farrell gave me no instructions after he left Tamaroa for Chicago in regard to the redemption of the horses; he knew nothing about it until after I had given up the horses; he was up here at the time and I wrote to him then; this was sometime in August; I think about the first of August; these are all the horses I know of
25 his having any interest in; Mr. Study came and redeemed the horses and took them off; I do not know what he did with them.

Cross-Examination.—The flour was not bought conditionally, only the horses; I think he paid Clark & Study for the flour at that time, at any rate he paid them some money; I think he was to give them 3 80-100 dollars per barrel; at that time I kept Farrell's books; Clark & Study were not credited with the flour on the books; I saw Farrell pay them some money and give them a note for the balance of the flour and horses and other property; I do not know how much he paid them. *Question.*—Was the sale of the horses and the
26 flour one transaction? *Ans.*—I do not know as it could be considered one; they were all sold the same evening, but the flour was sold and the bargain closed before the horses were sold. I think this transaction took place about the first of August; could not say within two weeks with any certainty. The condition on which these horses were bought was, that Farrell was to give $150 for the three; Clark & Study were to have ten days to redeem them in; if they did not redeem them within ten days the horses were to belong to Farrell; I was present when the bargain was made and heard it; the sale was conditional because Farrell did not want to buy the horses; he told Study he would give that much for them, and give Clark & Study ten days to redeem them in; Farrell thought that was all the horses were worth to him under the circumstances; he had all the horses he wanted of his own, and it would not justify him to pay more for them.

Question.—What was the reason Clark & Study were so anxious to sell them? *Ans.*—Study represented to Farrell that he wanted to keep those horses to pay a man that he owed in Chicago; he wanted to save them for Mr. Pearson; that Mr. Pearson had offered him more than that for the horses; that Mr. Clark and he owed Pearson, or something of that kind, and that he had offered them more for the horses than Farrell would give. I do not think there was any written contract in reference to the sale of the horses; I do not think the wagons and harness were bought conditionally; I think fifty dollars was to be paid for wagon and harness both. *Question.*—Was that paid for at the time? *Ans.*—It was not paid for in money (it should not have been, for he never got it). Part of answer in parenthesis objected to by plaintiff's attorneys, as not being an answer to the question. Farrell gave Clark & Study his
28 note for the balance he owed them, which I think was $250. Besides the above property he bought some feed stuff and empty barrels; I do not know whether they were included
28 in that balance or not; I think likely they were. There were ten barrels of feed stuff, and I suppose about two hundred pounds in a barrel; he was to pay a dollar a hundred for the feed stuff; the barrels were worth from 45 to 50 cts. apiece, but I do not know what he gave for them; $250, to the best of my recollection, was the amount of the note he gave to Clark & Study; he gave them no other note that I know of; I now recollect that he gave two notes—one for $100, and one for $150, instead of the $250; one was payable in thirty, and the other in sixty days from date; they were ordinary promissory notes; I think the notes were dated about the first of
29 August. Farrell went to Chicago two or three days after this; Study took the horses away four or five days after Farrell left; Farrell wrote to me that he had been garnisheed, after I had written to him that I had given up the horses; I wrote to him the next morning after giving up the horses; do not recollect the date of my letter. When I gave Study back the horses he gave me back both the notes, and I gave him one for one hundred dollars in place of them; I do not recollect the date of the note I gave him; it was payable in sixty days from the night I gave it; I was not authorized by Farrell to sign his name to promissory notes; had never signed one before;
30 Farrell's wife advised me to give the note. *Question.*—Why did she advise you to give it? Objected to. *Ans.*—"I told her of the contract between these men and Farrell, and told her of the notes which they held of his, and Study agreed to give me up those two notes if I would give him a new one and sign Mr. Farrell's name to it, for one hundred dollars payable in sixty days; so she thought I had better do it." I do not

know that this last note has been paid; Mr. Farrell said I did wrong in giving a new note; he told me he was garnisheed; said I did wrong in giving his note without his consent; it was between two and five days after I had written to Mr. Farrell before I received his letter stating he was garnisheed. It takes a letter, I should think, about fifteen hours after it gets started, to go from Tamaroa to Chicago.

30 *Direct Examination resumed.*—The wagon and harness before referred to were taken by Clark & Study's creditors; I took possession of them as agent for Mr. Farrell; but they were never removed from premises of Clark & Study.

31 *Joseph Clark*—Witness for Defence.

Plaintiffs object to Witness' competency, and ask to examine him thereto. Defendants object to examination, because witness has been sworn in chief. *Defendants' objection overruled, exception taken,* and examination proceeded with.

In answer to plaintiff's counsel, witness "*then testified that he was one of the defendants in the original suit and judgment in which this garnishee process issued.*"

Plaintiffs thereupon object to witness' competency,

I. Because of his *interests* in the event of the suit; and

II. Because of his being a *party to the record.*

Both objections overruled, exceptions taken, and witness allowed to testify, which he did, as follows:

"I know Pearson, one of the plaintiffs, and Farrell; I was one of the firm of Clark & Study; two of the horses which Farrell had we sold, and one Pearson got; he got nearly all the price of the other two horses, about $81; I told him it was the money we got from the sale of the horses."

Cross-Examination.—I think the horses were taken away from Farrell on the 15th August; Study told me he took them
32 away then; I did not see them till the 17th August; I first saw them at St. Charles, Missouri; the horses were taken there by Charles Griffin, a person in our employ; the two horses were sold on the 23d August at St. Louis, both to same man for $125; I don't know the name of the purchaser; one of the horses was six, the other eight years old; they were good horses; we paid $100 a piece for them; I sold the horses and received the pay for them; I gave Pearson $80 or $81; on reflection, I think it was $79 55 that I paid him; I paid him the money at Blue Island or Illinoistown. I paid it on the 25th of August; I paid it in the presence of T. C. Bradley and Study; I took no receipt of Pearson for the money; we tried to settle; I told him I would give him all the money I had, and he said he would send my wife home; my wife and

two children were then at St. Louis; one of the children was ten, and the other twelve years of age; my wife and my children were going to Middletown, Pennsylvania; they went there; I did not pay their fare; Pearson told me he paid my wife's and children's fare; my wife remained at Illinoistown
33 two days; she had some money; I don't know how much; Pearson told her to keep it; the agreement was that he should pay her and the children's fare; Bradley arrested me and Study at that time; the same day he started with us to Chicago; Study's wife and boy, (five years old,) were also at Illinoistown; my wife and children, and Study's wife and child, came to St. Louis after us; our families had been previously living at Perry County, Illinois; our wives disposed of their furniture before going to St. Louis; Mrs. Study and her child went to Wabash, Indiana, after Study and I had been arrested; she was present when Study and I were under arrest at Illinoistown; Mrs. Study gave Pearson money to buy her tickets to Wabash; she paid him the money with her own hands; I did not see how much money she paid him; did not see her hand the money to him; saw her take it out of her purse; my wife handed me the $79 55, which I gave to Pearson; she handed me $69 50 of it; the other $10 I had; both our wives were present at the time the money was paid Pearson; Pearson paid part of my, and Study's fare, from Illinoistown to Chicago; I think the fare was $20; Pearson paid $10 of it, and Bradley $10.

Plaintiff's counsel here showed witness the following memorandum, viz:

34 C. P. Bradley Dr. to Pearson,

To expenses of policeman to St. Charles, - -	$ 3.50
" tickets, fare R. R. of C. & Study, - - -	15.00
" p'd Bradley, expenses, and C. & Study at Illinoistown,	3.00
Received Mrs. Clark, - - -	$67.00
" Mrs. Study, - - - -	12.50
	$79.50
Tickets Mrs. Clark, - - - -	52.00
	$27.00
Mrs. Study's tickets, - - - -	10.00
	$17.50
Clark & Study's fare, - - - -	15.00
Mrs. Study's Hotel bill, - - -	$ 2.50

and asked witness whether it was not in the hand writing of

the plaintiff Pearson, to which witness answered that he could not certainly state; that he had seen Pearson write, had received letters from him, and that the memorandum looked like his writing. Plaintiff's counsel then asked witness whether the memorandum truly stated the sums of money paid by witness and Mrs. Study to the plaintiff, Pearson, and of the disposition he made of it, to which question the counsel for defendant objected, which objection the Court overruled, to which exceptions were taken, and the witness then answered
35 that he could not state, whether the memorandum showed the amount of money paid by [to] Pearson, or the sums paid by him for the tickets and expenses of Mrs. Clark and Study or not. *Cross-exam. continued.*

I delivered the horse to Pearson. Plaintiff's counsel here showed witness the following receipt:

"Received of G. C. Pearson one hundred dollars, being in full for a bay horse, bridle and saddle, the title to which we guarantee.

This 24th day of Aug., St. Louis, Mo., 1859.

(Signed,) CLARK & STUDY."

Witness said: This receipt was signed by me I think; Pearson wrote it; I am acquainted with his hand writing; have seen a good many of his letters; it resembles his hand writing; I think Bradley (paid) my and Study's Hotel bill at Illinoistown; I paid Bradley $8, when he searched me; my wife told Pearson that the money she handed me was all she had; Pearson went to St. Louis to order Mrs. Clark's and Study's furniture to be returned. I gave $70 of the proceeds of the two horses sold, to my wife. Cross examination here closed. Plaintiff's counsel then introduced in evidence, and read to the jury the receipt above mentioned.

In reply to a question by defendant's counsel, witness stated that the horse was taken in part settlement of this debt on which the defendant was garnisheed.

PLAINTIFF'S INSTRUCTIONS.

First. "If the jury believe, from the evidence, that at the time the garnishee, Farrell, was served with process, he was indebted to the defendants, Clark and Study, in the sum of two hundred and fifty-seven dollars, or any other sum of money, he cannot exempt himself from liability as such garnishee, by showing that subsequent to such service of process on him he paid such defendants the amount due them, or re-delivered to them the property which they had sold, or delivered, to him, and which he had at the time of such service of process, unless he also shows that such payment was so made, or such property so re-delivered, with the knowledge or assent of the plaintiffs, express or implied."

Second. "If the jury believe, from the evidence, that at the time the Garnishee, Farrell, was served with process, he was in possession of property which he had previously bought on credit from the defendants, Clark and Study, and for which he was then owing, he cannot exempt himself therefor in this proceeding by showing that the sale was a conditional one and subject to a right of redemption in such defendants, and that
37 they had redeemed such property subsequent to such service of garnishee process."

Third. "If the jury believe, from the evidence, that at the time of service of process of garnishment on Farrell in Chicago, he was in possession of property belonging to the defendants, Clark and Study; but that such property was then at Tamaroa in Perry county, Illinois, and was subsequent to such service re-delivered to the defendants, Clark and Study, by the agent of said Farrell; but that such re-delivery did not take place until after the lapse of more than a reasonable time from the service of garnishee in which notice thereof ought to have been communicated by said Farrell to his agent at Tamaroa, then the jury should find a verdict for the plaintiffs, and assess their damages at the sum which said Farrell agreed to pay for said property" ["unless they shall further believe, from the evidence, that with a full knowledge of all the facts the plff. in the execution obtained, in part satisfaction of their debt, the whole, or part, of the identical property which he had in his possession belonging to Clark and Study, or for which Farrell owed Clark and Study."]

NOTE.—So much of this instruction as is inclosed in brackets was added by the Court.

The three foregoing instructions were given as asked by plaintiff's counsel, save only the parenthetical clause appended to the last, which was added by the Court. Exceptions to each and every part of instructions taken by defendant.

Counsel for defendant then asked the Court to instruct the Jury as follows, viz:

First. "The garnishee process would not render Mr. Farrell liable for what might be done upon negotiable promissory notes given by him to Clark and Study, which notes had not
38 matured, unless the same were delivered up to Farrell, by Clark and Study, before his answer. Where property is not in actual possession of a person served with the garnishee process, but is in the possession of an agent of the garnishee, he is entitled to a reasonable time to notify his agent and protect, before he will be liable for an act of the agent which

may have deprived him of the possession of the same in the ordinary course of his duty with reference to the property."

Second. "The Jury cannot find for the plaintiffs the value of the horses if the plaintiffs received them, or the proceeds of them, with knowledge, after the garnishee process issued or was served."

Third. "The accepting of the one horse and of the proceeds of the others or a portion thereof is evidence of an assent on the part of the plaintiffs to the action of Farrell's Clerk in delivering up the horses, even if it was done after the service of process upon Farrell."

39 Fourth. "Defendant Farrell, cannot be charged for the value of any property to the delivery up of which, after service of garnishee process, he assented, or of which he had accepted the proceeds."

Fifth. "If the jury believe that there was a conditional bargain between Clark and Study and Farrell, and that it was rescinded even after garnishee process was served upon Farrell, and the plaintiffs with knowledge chose to pursue the property, they cannot recover against Farrell."

Sixth. "The Plaintiffs cannot pursue both the property and the garnishee. They must elect which they will follow, and having elected they are bound by such election."

Seventh. "If the jury believe that by any arrangement between the plaintiffs and Farrell, they undertook to pursue, and did pursue the property, and recovered the same, or the avails thereof, that then, for such property so received, or the avails of such as may have been sold, which may have been received by the Plaintiffs, knowing that it is the avails of any property in the possession of Farrell, at the time of service, Farrell will not be liable."

Each of the foregoing instructions asked by defendant was refused, and exceptions taken for such refusal.

Note—In the copy of the record from which this Abstract is made, and which has been kindly furnished for that purpose to the counsel for the defendants in error, by the present counsel for the plaintiff in error, and also in the printed Abstracts heretofore prepared by the plaintiff in error, the first instruction here given as asked by defendant below, is stated to have been *asked* and *given* at the instance of the *plaintiffs* below. This is a mistake. The instruction (as, indeed, appears from its face) was asked by counsel for *defendant* below, and refused. The present counsel for plaintiff in error, who first became connected with the case since error was prosecuted, on this mistake being pointed out to him, by the counsel for the defendants in error, obligingly consented to the correction of the mistake in this abstract without compelling the defendants in error to sue out a certiorari to the Court below.

INSTRUCTION BY THE COURT.

40 "If the jury believe, from the evidence, that after the service of the garnishee process upon Farrell, he delivered the defendants any portion of the property in his hands which belonged to the defendants in the execution, and that the plaintiffs pursued and recovered any of such property from the said defendants with knowledge of the facts, then the value of such property cannot be recovered against Farrell. But if the defendants in the execution sold any of such property without the direction of the plaintiffs in the execution, though the whole or a portion of the money received for such property, still the garnishee, Farrell, would not thereby be exonerated from his liability as garnishee in this case for so much of said property or indebtedness."

To which defendant then and there excepted.

Jury returned a verdict for plaintiffs and assessed their damages at $257.

The defendant then moved for a new trial and in arrest of judgment on the following grounds:

I. The court erred in giving the various instructions to the jury.

41 II. The court erred in refusing the instructions asked by defendants' counsel.

III. The jury found the verdict directly against the charge of the court, inasmuch as they found for the full value of the property, and it was undisputed that one of the horses had been received by plaintiffs and applied upon said debt.

IV. The verdict was too much.

V. The verdict was against the evidence, and should have been in favor of Farrell.

ASSIGNMENT OF ERRORS.

43 I. The Judge erred in refusing to give the jury the 1st, 2d, 3d, 4th, 5th, 6th and 7th instructions asked by the said Joseph Farrell.

II. The Judge erred in giving the instructions so given by him of his own motion to the jury.

III. The Judge erred in overruling the motion for a new trial.

IV. In that the verdict was directly against the charge of the court.

V. In that the verdict was against the evidence, and is not supported by it.

VI. In that the verdict is too large.

VII. The court erred in excluding evidence offered by said plaintiff in error.

VIII. The court erred in admitting improper evidence by the defendants in error.

JOINDER IN ERROR.

The foregoing Abstract has been made by, and is submitted on behalf of defendants in error, first, because the Abstract prepared and filed by plaintiff in error fails to present material portions of the evidence in the case; and second, because the Abstract filed by the plaintiff in error is incorrect, not only in making the *first* instruction herein stated to have been *asked* by the plaintiff in error, to have been the *fourth given* on behalf of the defendants in error, (as fully explained in the note, ante,) but also in various other particulars.

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION.

JOSEPH FARRELL, *Garnishee, etc.*,
vs.
GUSTAVUS C. PEARSON AND
JOHN H. F. GRACE.

DEFENDANTS' BRIEF.

A brief statement of the facts on which this suit is based, and of the matters at issue therein, may aid the court in forming an opinion. The defendants obtained a judgment against Clark and Study in the Superior Court of Chicago, for $795.90, on which an execution was issued, and returned "no property found." The defendants then sued out garnishee process against the plaintiff, who thereupon filed his answer, admitting an indebtedness to Clark and Study of about $70, but claiming an offset thereto of $18. On this answer issue was joined and the cause submitted to a jury, who gave the plaintiffs a verdict for $257, on which final judgment was entered. The plaintiff brings the cause to this Court, and assigns for error:

First. The refusal of the Judge to give the instructions asked by the plaintiff.
Second. The giving erroneous instructions by the Judge of his motion.
Third. The overruling the motion for a new trial.
Fourth. The verdict being directly against the charge of the Court.
Fifth. The verdict being against the evidence.
Sixth. The verdict being too large.
Seventh. The excluding evidence offered by the plaintiff.
Eighth. The admitting improper evidence on behalf of defendants.

Some of the errors assigned need no argument. They mutually destroy each other. If the Judge gave erroneous instructions, as the plaintiff alleges, then the jury did right in disregarding them. The plaintiff is *estopped* to say in one and the same breath:—The Court erred in giving the law, and the jury erred in disobeying it thus given. No authority could add weight to the proposition, that a party cannot be permitted to urge the reversal of a judgment upon *objections which are totally repugnant to each other*, since if *one* be *valid*, its *opposite* must *necessarily be void;* and *which* shall the Court examine? A rule of Court requires errors to be *specially* assigned. Parties must show *wherein* the record is erroneous. To what end, then, should the Court make a *voyage of discovery* through the record in search of errors alleged—"To be *and* not to be."

The seventh error assigned finds its answer in the record, which fails to show that any evidence *whatever*, offered by the plaintiff, was excluded. He had the full benefit of *all* the evidence he produced.

The remaining errors will be considered in their order, beginning with the first, which is the refusal of the Court to give the instructions asked by the plaintiff.

The first of these instructions (erroneously stated to be the defendants' fourth, see note to Abstract) is clearly not law. The instruction is obscurely worded, but the first part of it seems to say, that the maker of a negotiable promissory note not due at the time process is served, cannot be charged as garnishee unless the note is delivered up to him before he files his answer. Were this true, it would be absolutely impossible to charge the maker of an unmatured note as garnishee; first, because the payee, that is the defendant debtor, would be interested to the value of the note, in resisting a recovery by the plaintiff, and therefore would never *voluntarily* deliver up the note to the maker; a fact which the bringing of the suit itself demonstrates, since, could the debtor payee be presumed to be willing to transfer the note for the benefit of the judgment creditor under *any* circumstances, it is manifest that he could have no more objection to a direct transfer of the note to his creditor *before* suit, than to a delivery of the note for the benefit of the same party *after* suit had been commenced; and second, because the Court has no power, in such a case, to *compel* a delivery of the note to the maker who has been garnisheed.

In suits of this character the Courts of several of the States have drawn distinctions between negotiable, and unnegotiable, promissory notes, (*Drake on Attachment, Secs.* 567–599,) holding the maker chargeable as garnishee in the latter case, though not in the former. In Illinois, *all* promissory notes are negotiable, but only by indorsement. (*Rev. St. Ch.* 73, *Sec.* 4.) The inconvenience which would result from charging the maker of an unmatured, negotiable promissory note as a garnishee, in those States which permit a transfer under the law merchant, by mere delivery, can never be felt here. But in this State, the liability of the maker of a promissory note as a garnishee, is not an open question. Our Statutes (*Rev. St. Ch.* 9, *Sec.* 17,) recognize by the strongest inplication the liability of the maker of a promissory note to be charged as garnishee, provided it has not been negotiated, and is "*due at the time of rendering the judgment*," against him. In the case at bar, not only the two notes originally given by Farrell to Clark and Study, but also the note given by Watson, Farrell's clerk, at the time the horses were taken away, were all overdue *before Farrell filed his first answer*. Farrell says in his "Caution," that the notes *he* gave were dated on the 3d or 4th of August, 1859, and that one was payable in 30, and the other in 60 days. His first answer was not filed till the 18th of the following October. The note given by Watson, as will be demonstrated, was made on the 15th of August, was a 60 days' note, and of course was due when the above answer was filed. Farrell does not pretend that this last note had been negotiated, or that it was not held by Clark and Study at the time it matured, and the two other notes were delivered up to his clerk Watson on the 15th of August.

The latter part of this instruction was properly rejected, because it was based on the assumption of facts which the evidence expressly disproves. Watson was a mere clerk; he had no individual possession of the horses, or any of the rest of the property. He could not, while Farrell clearly could, have maintained an action of trespass in respect of such property. Moreover, this instruction assumes that Watson's act in delivering up the horses was done in the *ordinary course of his duty* as Farrell's clerk; whereas Farrell, in his letter

to the defendant Pearson says, "when I saw you, I had no idea that he (Study) would redeem them (the horses.) But while I was away, he goes to young Watson, *tells him a cock-and-bull-story*, I suppose, *and talks him out of the horses*, and returns to him my notes which I gave him." Is this the language of a principal in regard to an act done by an agent, and that agent a mere clerk in a retail store, "*in the ordinary course of his duty*?" Watson himself testifies that he received no instructions as to the horses from Farrell after the latter left for Chicago; that Farrell knew nothing about the horses being given up till after they had been taken away; that when Study came to get them, Watson, not knowing what to do as it would seem, consulted Farrell's wife, and under her advice gave up the horses, received the notes which Farrell had given, and signed his name to a new one for $100; and that as soon as Farrell learned it, he complained that Watson *had done wrong* in giving the note. Has this transaction of Watson the aspect of an act done "*in the ordinary course of his duty?* The delivery of the horses and the execution of the new note was all one transaction, and, in the opinion of Watson and Farrell's wife, the giving the last note was the only way to effectuate Clark and Study's right of "*redemption*" as it is called. If Watson, as he admits, had no authority to execute the note, he had no authority to give up the horses. Neither was it an act done *in the ordinary course of his duty.*" The instruction is bad in its *entirety*, and bad in its *parts.*

The remaining instructions asked by Farrell from the second to the 7th inclusive, (marked in the plaintiffs' Abstract, 1, 2, 3, 4, 5, and 6,) aside from their exceeding vagueness and generality, which renders them susceptible of almost all sorts of constructions, proceed on the assumption that where a garnishee has property belonging to, or is indebted for property purchased of, the judgment debtor, and subsequent to the service of garnishee process such debtor re-possesses or re-purchases the property, and thereafter transfers the same, or the proceeds thereof, to the judgment creditor, the latter by taking the property with knowledge of the circumstances under which it had been held or owned by the garnishee, or by accepting the proceeds of it, thereby discharges the garnishee.

All these instructions are based on the testimony of Clark, one of the original defendants. His competency was objected to, and the reasons on which the opinion of the inadmissibility of his testimony is based will be given later. Assuming him to have been competent, what does the evidence establish? There are scarcely any two points in which Farrell, Watson and Clark agree. Watson testifies that about the first of August, 1859, Clark & Study sold Farrell three horses, a bridle and saddle, wagon and harness, forty-three barrels of flour and about ten barrels of feed; that Farrell was to give $150 for the horses, $50 for the wagon and harness, $3.80 per barrel for the flour, $1 per hundred for the feed, there being about two hundred pounds to the barrel, and that the barrels were worth from 45 to 50 cents each; that the horses were sold conditionally, Clark & Study having, by agreement, the right to redeem or re-purchase them in ten days for $150; that the rest of the property was purchased unconditionally; that Farrell paid Clark & Study some money at the time of sale, and gave his note for $250, the balance due, and that within the ten days Study went to Watson, took away the horses, gave up Farrell's note and received another, to which Watson signed Farrell's name for $100.

After Study had taken the horses, Farrell notifies the defendants of the fact, and directs them where Clark and Study can probably be found. The defendant, Pearson, goes to St. Louis, with a detective, and arrests Clark and Study, and has them taken to Chicago. At

the same time Clark and Study let Pearson have one of the horses and the bridle and saddle which had been sold to Farrell, and sign a receipt to Pearson, purporting that they had received $100 in full therefor. This is the most favorable aspect in which the plaintiffs' case can be presented. What does it show? Clearly that the *legal title* to all this property was vested in Farrell from the hour he purchased it. As between him and Clark and Study, there cannot be a doubt about it. He had possession, in itself a colorable title, and had given his note for the general balance due, including articles which, it is not pretended, were not purchased absolutely. The right of Clark and Study to redeem the horses, as Farrell and his clerk called it, if any such right existed, was in effect merely a right to re-purchase, supported by an express agreement, and just as much a legal right, as capable of sustaining an action, and as truly covered by the garnishee process as the note itself. To the demand of Clark and Study for the horses, Farrell might have replied: "Your creditors have garnisheed me." If the horses did not belong absolutely to Farrell, and if Clark and Study, on demand and tender of the $150, or offer to deliver up the note, could have maintained trespass or trover, had Farrell not been garnisheed, still, after that process had been served on him, he had no right to part with the possession of the property. A person garnisheed is bound from the *service* of the writ.

McCoy vs. Williams, 1 *Gil.* 584;
Drake on Attachment, *Sec.* 691.

But the plaintiff will contend that he was entitled to a reasonable time in which to communicate the fact of garnishment to his clerk, and that before he could do this the horses had been taken away. Farrell was served with process on the 12th of August; Clark testifies that Study took the horses away on the 15th of August. Farrell, in his dispatch to the defendants, dated the 16th, says Study left Tamaroa *Monday* morning. Now Courts judicially notice the computation of time. The calendar for 1859 shows that the Monday here referred to occurred on the 15th of August, two full days, and not improbably the larger part of the third, intervened between the time process was served on Farrell and the day Study took away the horses. Watson says it takes ordinarily fifteen hours for a letter to pass between Tamaroa and Chicago after it gets started. Does not the difference between fifteen and forty-eight, or, more probably, sixty hours, furnish latitude enough for *reasonable time?* And what shall be thought of the statement of Farrell in his answer—"that on the *day* of service of said garnishee process upon him, *or the next day thereafter*, as he is informed and verily believes true, but that at *any rate before he had time to communicate with his said clerk*, the said clerk had delivered up said horses, bridle and saddle, etc." The Monday mentioned cannot be referred to the 8th of August, because that was four days *before the service* of process, and Farrell nowhere pretends that the delivery took place *before* that day. Farrell says the sale took place on the 3d or 4th of August. Watson testifies that Farrell went to Chicago *two or three* days afterwards, and that *four or five* days after that Study took the horses, all of which is wholly inconsistent with the hypothesis that the horses were taken away on the 8th.

Assuming the question of *reasonable time* to be disposed of, and that the sale to Farrell was absolute, which his express agreement with the defendants, and his "*Cautions*" *estop* him to deny, can the broad doctrine propounded in these instructions be maintained? What injustice would be done in allowing a recovery? What injustice would not be done in permitting garnishees thus to trifle with, and evade the process of the Court? The plaintiff

will contend that it would present a case of double recovery. Not at all. The garnishee is charged because of his indebtment to the judgment debtor. He may show that the plaintiff has waived or released his rights. But where there could have been no election, there could be no waiver. The plaintiff will say that he notified the defendants that the horses were taken away, and they chose to attempt their recovery. But the whole evidence, from the agreement between Farrell and the defendants down to the testimony of Clark, shows that the defendants were rather intent to arrest the *men* than get possession of the *horses*. Farrell, by his agreement with the defendants, was to "*hunt up*" Clark and Study for a *consideration*. Men do not need to be hunted up whose whereabouts are *known*. Farrell sends word to the defendants that Clark and Study have gone to St. Louis. Pearson with a detective officer follows, finds and arrests them. This is his first care, his primary object. Had he stopped here, would it be pretended that he had done anything to waive or release his rights against Farrell? But he buys a horse, saddle and bridle of Clark and Study, which they had first sold to, and then re-purchased, or as the phrase is, "*redeemed*" from, Farrell. Supposing the horse had been bought by Clark and Study of some one else, might not Pearson have bought it, or if found within the State, have sued out an execution and levied on it? The defendants never assented to any change of either possession or title of the property held by Farrell when he was garnisheed. Their answer to him, had he insinuated a waver or release on their part, would have been,—"You came to Chicago, stated that you were owing our debtors, gave us the particulars of the indebtedness, pretended that you could assist us in the collection of our debt, as also in discovering the whereabouts of Clark and Study, and so render them amenable to the law, induced us to issue garnishee process against you, and then entered into a written agreement with us whereby you secured to yourself a compensation for your expected services, and all on a distinct understanding of facts, which four days afterward you say never existed." It is not a case of double recovery. To-day Farrell *owns* property, but *owes* Clark and Study for it, and is therefore garnisheed; to-morrow, through the fault or neglect of Farrell, Clark and Study *own the same property*, and the judgment creditor buys it from, or seizes it on execution against them. The Judge who tried the case certainly did not countenance this idea of a double recovery, for he says in his charge to the jury, that the fact of the plaintiff's receiving the *proceeds* of one of the horses would not debar a recovery. But what is the difference in principle between receiving the horse and the proceeds of it? In either case, there would be an admission of ownership in the judgment debtor.

For the sake of brevity, the remaining errors may well enough be considered together. But first let a few observations be submitted as to the competency of the witness Clark. Two objections were urged against his testifying, first, because of his *interest* in the suit and second, because of his being a *party* to the record.

At first view it would indeed appear as if his *interest* was *adverse* to the party calling him. But when it is considered that debtors almost invariably resist the collection of debts, by means of this process, and that failing debtors especially strive to put their property beyond the reach of a common law execution, and that great facilities to the commission of fraud and perjury would be given if debtors are allowed thus indirectly to prove their own poverty, it would seem as if every reason of policy tends to the exclusion of such a witness.

As to the second objection, a party to the record, whether nominal or real, legally or beneficially interested, is not a competent witness in the cause.

[Frazier *vs.* Laughlin, 1 Gil. 360; Mant *vs.* Mainwaring, 8 Taunton, 138; Supervisors of Chenango *vs.* Birdsall, 4 Wend. 453; Smith *vs.* Moore, 3 Scam. 462; Frear *vs.* Evartson, 20 Johns. 142; Mauran *vs.* Lamb, 7 Cowen, 174; Benjamin *vs.* Coventry, 19 Wend. 353; Gillet *vs.* Sweat, 1 Gil. 487; Marks *vs.* Butler, 24 Ills. 567.]

A judgment debtor is a party to the record of garnishee proceedings founded on the judgment against him. Such proceedings are merely a continuation and appendix to the original suit. They must be had in the same Court where the original judgment was obtained. No other Court has jurisdiction. (*Rev. St. ch.* 57, *Sec.* 38.) Proceedings are commenced by an affidavit, necessarily entitled, as in the case at bar, in the *names of the parties to the original suit.* The judgment should be in form, what it is in the present case, viz: a judgment that the original defendants have, and recover of the garnishee to the use of the plaintiffs.

Stahl vs. Webster, 11 *Ills.*, 518.
Hitchcock vs. Watson, 18 *Ills.*, 289.

"*It is, in effect, a suit by the defendant in the plaintiff's name against the garnishee, without reference, and indeed, in opposition to the defedants' concurrence.*"

Drake on Attachment. Sec. 523.

The garnishee can plead the judgment against him in bar to an action brought for the same cause, by the judgment debtor. If this doctrine be correct, and Clark's evidence be stricken from the record, what evidence remains to show that the verdict was too large, or against, or unsupported by, the evidence, or in what way does it appear that a new trial would be attended with a different result?

Farrell by his agreement with the defendants and by his conduct and representations at, and as is inferable, previous to the service of garnishee process on him, is *estopped* to say the sale was conditional. "This principle (of estoppels *in pais*) is of general application where there is—1st, an act or admission inconsistent with the evidence offered, or title set up—2d, an act of the other party, influenced or induced by such act or admission, and—3d, an injury resulting therefrom, by permitting the act or admission to be disproved."

Davis vs. Bradley, 24 *Vermont* 64; 2 *Smith's Ld. Ca.* 642.
1 *Phillips Ev., Cowen & Hill's notes*, 454 *note* 129, *and page* 458 *of this note.*

Finally. The jury were justified in disbelieving the whole story of a conditional sale. Farrell, in his agreement with the defendants, and in his "*Caution*," which, by the way, is dated at Tamaroa, his place of residence, says he owes Clark and Study $257 on *two* notes, one for $100, the other for $157, the dates and times of maturity, of which he states with great particularity. In his answer he states that he gave his note for $157, for the horses, saddle and bridle, and further that Clark and Study had the right to redeem the same within *two weeks* from the sale, on returning this note for $157, "and payment of the expen-

ses about the same." The keeping of the horses he says amounted to $18. Watson testifies that he heard the bargain between Farrell, and Clark and Study; that Clark and Study had *ten* days to redeem them, on payment of $150; that Farrell gave his *note* for $250; subsequently he says *two* notes were given, one for $100, the other for $150. The horses were taken away on the 15th of August. Watson says he wrote to Farrell at *Chicago* the *next morning*. That same morning Farrell telegraphs the fact from *Cincinnati* to the defendants. Altogether the evidence in regard to this sale, like that of Clark's in relation to his payment of $81 to Pearson at St Louis, and which is afterwards admitted to have been for the purpose of buying tickets, etc., for the wives and children of Clark and Study, is neither consistent with itself, with probability, nor with truth.

MYRON C. PARSONS,

Counsel for Defendants.

Supreme Court 3rd Div.

Joseph Farrell

vs

Gustavus C Pearson

Amended Abstract

Filed June 18th 1861

Lorenzo Leland

Clerk S.C.

United States of America
State of Illinois Cook County ss.

Pleas before the Honorable the Judges of the Superior Court of Chicago within and for the County of Cook and State of Illinois at a regular term of said Superior Court of Chicago begun and holden at the Court House in the City of Chicago in said County and State on the first Monday being the second day of January in the year of our Lord Eighteen hundred and sixty and of the Independence of the United States of America the Eighty Fourth

Present The Hon John M. Wilson Chief Justice
Of Superior Court of Chicago
Carlos Haven Prosecuting Attorney
John Gray Sheriff of Cook County

attest
Walter Kimball Clerk

Be it remembered that heretofore to wit on the eleventh day of August in the year of our Lord Eighteen hundred and fifty nine came the Plaintiff Gustavus C Pearson by his attorney and filed in the office of the Clerk of said Court his certain Affidavit for Garnishee Process in words and figures following to wit

To the Superior Court of Chicago

Gustavus C. Pearson and
John W. F. Grace. Plffs

vs

Joseph Clark and
William H Study Defts

State of Illinois }
Cook County } ss

Gustavus C Pearson of Chicago in said County being first duly sworn maketh oath and saith that the said Plaintiffs have recovered a judgment in this Honorable Court against the above named Defendants for the sum of seven hundred and ninety five dollars and ninety cents. That an Execution has been duly issued on said judgment and returned by the Sheriff of Cook County to whom the same was directed "no property found"

And this Deponent further saith that the said Defendants have no property within the knowledge of this affiant in their possession liable to execution

And this Deponent further saith that he hath just reason to believe that Joseph Farrell is indebted to the said Defendants and has effects and Estate of said Defendants in his hands wherefore this Affiant prays

that a garnishee process may issue against the said Joseph Farrell according to law.

Subscribed and Sworn to before me at Chicago aforesaid this 11th day of August A.D. 1859. Walter Kimball Clk

G. C. Pearson

And afterwards to wit on the day and year last aforesaid there issued out of the Clerk of said Court a certain writ of Summons which said writ with the Sheriffs return thereon is in words and figures following to wit:

State of Illinois } ss
County of Cook }

The People of the State of Illinois To the Sheriff of said County Greeting:

We command you that you summon Joseph Farrell if he shall be found in your County, personally to be and appear before the Superior Court of Chicago of said County on the first day of the next term thereof to be holden at the Court House in the City of Chicago in said County, on the first Monday of September next to answer unto Gustavus C Pearson and John H. F. Grace as Garnishees of Joseph Clark & William H. Study then and there to answer as to the right credits effects property or money in

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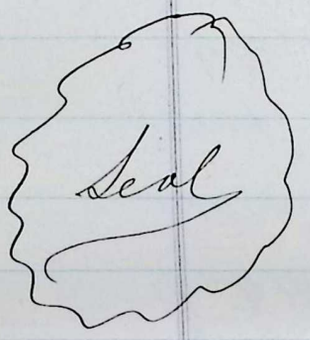
their hands belonging to the said Joseph Clark and William H Study



And have you then and there this writ with an endorsement thereon in what manner you shall have executed the same

Witness Walter Kimball Clerk of our said Court and the Seal thereof at the City of Chicago in said County this 11th day of August A.D. 1859

Walter Kimball Clerk

Served by reading to the within named Joseph Farrell as garnishee the 12th day of August 1859

John Gray Sheriff

By F Lumbard Depy

\+ —

And afterwards to wit on the eighteenth day of October in the year aforesaid came Joseph Farrell and filed in the office of the Clerk of the Court aforesaid his certain Answer in words & figures following to wit:

Superior Court of Chicago

Gustavus C Pearson (and)
John H F Grace Plffs
vs

Joseph Farrell
Garnishee of Joseph
Clark & William H. Study

The answer of Joseph Farrell who has been summoned as Garnishee for answer saith That he had or has no property belonging to the said defendants or either of them nor was or is indebted to them or either of them in any sum which is now in any manner subject to the claim of the said Plaintiffs to the best of his knowledge information and belief Except about the sum of seventy dollars which he now has ready to be paid as this Court may direct.

Joseph. Farrell

Cook County ss

Joseph Farrell being duly Sworn deposes and says that he has read the foregoing answer by him subscribed and that the same is true of his own knowledge except as to the matters therein stated upon information and belief and as to those matters he believes it to be true.

Joseph Farrell

Subscribed & Sworn
before me this 18th
day of October 1859

Walter Kimball Clerk

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And afterwards to wit on the twelfth day of November in the year aforesaid came the Plaintiffs by their Attorneys and filed in the Office of the Clerk aforesaid their certain Exceptions to Garnishee's Answer in words and figures following to wit:

The Superior Court of Chicago
Of the November Term 1859

Gustavus C Pearson &
John H. F. Grace

vs

Joseph Farrell Garnishee
of Joseph Clark & William H Study

An exception taken by the said Plaintiffs to the insufficient answer of the said Garnishee in the above entitled cause.

1 For that the said Garnishee does not say that he had no property belonging to said Defendants nor that he was not indebted to said Defendants at the time of the service of garnishee process; but says that he had or has no property belonging to said Defendants or either of them nor was or is indebted to them or either of them in any sum which is now in any manner subject to the claim of the said Plaintiffs.

6 In which particular the said Plaintiffs except

cepts to the Answer of the said Garnishee as evasive, imperfect and insufficient and humbly prays that the said Garnishee may be compelled to put in a full and sufficient answer to said garnishee process

Hervey Anthony & Galt
Attorneys for Plffs

And afterwards to wit on the sixteenth day of November in the year aforesaid said day being one of the days of the November Term of the Superior Court of Chicago the following among other proceedings was had and entered of record in said Court to wit:

Gustavus C Pearson and
John H. F. Grace

vs Garnishment

Joseph Farell Garnishee
of Joseph Clark & William H Study

This day comes said Plaintiffs by Hervey & Anthony their Attorneys and said Joseph Farrell Garnishee having filed his answer herein said Plaintiffs thereupon enter their exceptions to said Answer which are sustained and it is ordered said Garnishee answer over by 24th Instant

And afterwards to wit on the twenty fifth day of November in the year aforesaid came Joseph Farrell by his Attorney and filed in the Office of the Clerk of the Court aforesaid his certain Further Answer in words and figures following to wit:

State of Illinois } ss
Cook County }

Superior Court of Chicago

Gustavus C. Pearson
and John H. F. Grace
v's
Joseph Farrell garnishee
of Joseph Clarke and
William H. Sturdy

The further answer of Joseph Farrell who has been summoned as garnishee respectfully showeth, That at the time of the service of the Garnishee process upon him he was in the City of Chicago which is about two hundred and Eighty miles from Tamarora his place of residence that at that time he supposes but does not know personally that there was in the possession of his Clerk or agent at Tamarora three horses and a saddle and bridle worth about one hundred and fifty seven dollars which he had purchased conditionally giving his negotiable prom-

-ifeory note to that amount due in sixty days there-
from which purchase was made on or about
the third day of August last past that it was
agreed between the respondent and said Clark
and Study that in case they could get more for
the horses within two weeks than that price they
were to have the right to redeem them upon the
return of said note & payment of the expenses
about the same and that this agreement was
known to his said agent or clerk and this
respondent says that on the day of service of
said Garnishee process upon him or the next
day thereafter as he is informed and verily be-
lieves true but that at any rate before he
had time to communicate with his said
Clerk the said Clerk had delivered up said
horses bridle and saddle to said Clark and
Study and received back the note of this respon-
-dent in pursuance of said agreement and that
this was done without the knowledge or consent
of this respondent and this respondent further
saith that as soon as he discovered the fact
he communicated the same to the said
Plaintiffs and they immediately commenced
pursuit of the said horses as the property of said
Clark & Study that said Plaintiffs obtained
one of said horses and advertised it for sale
as the property of said Clark & Study and

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also obtained a very large portion of the proceeds of the other two horses.

And this respondent further saith that he admits that he was indebted in about the sum of Seventy dollars being the balance due upon the purchase of certain flour of the said Clark & Study which balance this respondent claims should be reduced by an offset of Eighteen dollars then due for keeping said horses which was to be applied in that way, And this respondent further saith that he is informed and verily believes true, that the judgment upon which the Garnishee process was founded in this case has been fully paid and satisfied by the said defendants and that he should be discharged from the proceedings, and that he had or has no further or other property of the said defendants Clark & Study or either of them nor was he or is he indebted to them or either of them in any larger or greater sum than above admitted.

Joseph Farrell

Cook County. S.S.

Joseph Farrell being duly sworn deposes and says that he has heard read the foregoing answer by him subscribed and that the same is true of his own knowledge except as to the matters and things therein stated upon

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information and belief and as to these matters he believes it to be true.

Subscribed & Sworn before me this 25th day of Nov 1859
Walter Kimball Clerk

Joseph Farell

And afterwards to wit on the thirteenth day of December in the year aforesaid came the Plaintiffs to this suit by their attorneys and filed in the office of the Clerk of said Court their certain Reply to Answer in words and figures following to wit:

The Superior Court of Chicago
Of the December Term 1859

Gaetano C. Pearson and
John H. F. Grace
vs
Joseph Farrell garnishee of
Joseph Clarke and
William H. Study

And now comes the said Plaintiffs by Hervey Anthony and Galt their attorneys and says that the answer of the said Joseph Farell garnishee of Joseph Clarke and William H Study is not true: in this that he has only about Seventy dollars in his hands belonging to said Clark and Study: but on the contrary thereof these Plaintiffs aver that at the time of the serving

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of the said garnishee process on the said Farrell the the said Farrell had in his posseßion and under his control property and effects belonging to said Clark and Study to the amount of Two Hundred and fifty seven dollars over and above the seventy Dollars which he admits he has in his posseßion now belonging to said Clark & Study and this the said Plaintiffs are ready to verify —

And as to the matter in said answer about his clerks leaving the property go out of his said Farrells possession after the service of the said garnishee process and before he could communicate the fact of his being garnisheed to his said clerks, these Plaintiffs know nothing but leave the said Farrell to prove the same but these Plaintiffs believe that the said Farrell has been combining and conspiring with said Clark & Study to defraud these Plaintiffs out of the amount in said Farrells hands at the time of the service of said garnishee process —

Hervey Anthony & Galt
attys for P.ffs

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And afterwards to wit on the third day of January in the year of our Lord One Thousand Eight hundred and sixty said day being one of the days of the January term of the Court aforesaid the following among other proceedings was had and entered of record in said Court to wit:

Gustavus C Pearson
and John W F Grace

vs

Garnishment

Joseph Fanell Garnishee of
Joseph D Clark and William H Study

This day comes said plaintiffs by Hervey and Anthony their Attorneys and said Joseph Fanell Garnishee of said defendant Clark and Study by Dewey and Smith his attorneys also comes and issues being joined herein with said Garnishee it is ordered that a jury come whereupon comes the jury of good and lawful men to wit:
C D Miller T Van Gorder. Wm Anderson. M N Kimball D M Woodward. Wm G Waterman. Lyman Staples. Julius Lincoln. Peter C Cusk. Geo Cox. S G Campbell and Wm Myrick who being duly elected tried and sworn to try the issues joined aforesaid with said Garnishee Joseph Fanell, after hearing evidence arguments of Counsel and instructions of the Court retire to consider of their verdict, and afterwards come into Court submit their verdict and say We the jury find issues for said Plaintiffs on issues joined with said Garnishee Joseph

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Farell and find the amount due from said Garnishee Joseph Farell to the defendants Clark & Study to be the sum of two hundred and fifty seven dollars.
And thereupon said Garnishee Joseph Farell submits his motion herein for a new trial.

And afterwards to wit on the twenty fifth day of February in the year aforesaid said day being one of the days of the February Term of said Court the following among other proceedings was had and entered of record in said Court to wit:

Gustavus C Pearsons and
John H. F. Grace
vs
Joseph Farell Garnishee of
Joseph Clark and William H Study

And now again comes said plaintiffs as well said Garnishee of said defendants Joseph Farell by their Attorneys as aforesaid and counsel being heard on motion of said Farell heretofore submitted for a new trial herein, and the Court being fully advised overrule said motion for a new trial Wherefore said plaintiffs ought to have judgment entered on verdict and finding of the Jury rendered herein

Therefore it is considered said defendants Joseph Clark and William H. Study use and benefit of said plaintiff in this suit do have and recover of said Garnishee

Joseph Farell the said sum of two hundred and fifty seven dollars in form aforesaid by the jury found due from him to said defendants together with their costs and charges in this behalf expended and have execution therefor. And thereupon said Joseph Farell having entered his exceptions prays an appeal herein to the Supreme Court which is allowed on filing bond in three hundred and fifty dollars with security to be approved by a Judge of the Court and to be filed within ten days.

and afterwards to wit on the twentieth day of March in the year aforesaid said day being one of the days of the March Term of the Superior Court of Chicago the following among other proceedings was had and entered of record in said Court to wit:

+

Gustavus C. Pearsons
and John H. F. Grace

vs

Joseph Farell Garnishee of
Joseph Clark and William H. Study

Garnishment

On motion Garnishee Joseph Farell it is ordered that time to file bond and bill of exceptions on appeal taken herein be and is hereby extended twenty days this ordered entered now as of 5 March Instant.

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And afterwards to wit on the twenty fourth day of March in the year aforesaid said day being one of the days of the March Term of the Superior Court of Chicago the following among other proceedings was had and entered of record in said Court to wit:

Gustavus C Pearson
and John H. F. Grace

vs

Garnishment

Joseph Farell Garnishee of
Joseph Clark and William H Study

And now again comes said Garnishee Joseph Farell and on his motion it is ordered that time to file bond and bill of exceptions herein be and is hereby further extended until Wednesday next.

And afterwards to wit on the twenty seventh day of March in the year aforesaid came Joseph Farell and filed in the office of the clerk of said Superior Court his certain Appeal Bond in words and figures following to wit:

Appeal Bond of Joseph Farell

Know all Men by these Presents, That we Joseph Farell and Dewitt C. Barber & Alton P Head of the County of Perry and State of Illinois and Michael Heeley of the County of Cook and State of Illinois are held and firmly bound unto Gustavus C Pearson and John H.F. Grace also of the same County and State

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in the penal sum of Three Hundred and Fifty dollars lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves our heirs, executors and administrators, jointly, severally and firmly, by these presents.

Witness, our hands and seals, this 23d. day of March A.D. 1860.

The Condition of the above Obligation is such, That whereas, the said Gustavus C Pearson and John H. F Grace did on the Twenty fifth day of February A. D. 1860 in the Superior Court of Chicago in and for the County of Cook, and State aforesaid, and of the February Term thereof, A.D. 1860 recover a judgment against the above bounden Joseph Farrell garnishee of Joseph Clark and William H Study for the sum of Two Hundred and fifty seven dollars and cents, besides costs of suit; from which said judgment of the said Superior Court of Chicago the said Joseph Farrell has prayed for, and obtained an appeal to the Supreme Court of said State.

Now, Therefore, if the said Joseph Farrell shall duly prosecute his said appeal with effect, and moreover, pay the amount of the judgment, costs, interest and damages rendered, and to be rendered against him in case the said judgment shall be affirmed in said Supreme Court, then the above obligation to be void, otherwise to remain in full force and virtue.

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Taken and entered into before me, at my office in Chicago, this day of A.D. 18

Grant Goodrich

Judge of Superior Ct of Chicago

Joseph Farrell (Seal)
D.C. Barber (Seal)
A.P. Head (Seal)
Michael Keeley (Seal)

State of Illinois
Cook County } ss

Michael Keeley being duly sworn says he is a resident of the City of Chicago County & State aforesaid & that he is worth the sum of seven hundred dollars over and above all his debts & liabilities of whatever nature or description & exclusive of property exempt from execution.

Subscribed and sworn to before me this 26th day of March A.D. 1860

Michael Keeley

Chas. H. Barnum (Seal)
J.P.

And afterwards to wit on the twenty eighth day of the month and year last aforesaid came Joseph Farrell and filed in office of the Clerk of this Court aforesaid his certain Bill of Exceptions which said Bill is in words and figures following to wit:

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Superior Court of Chicago

Gustavus C Pearson and
John H. F. Grace
plaintiffs
vs
Joseph Farell Garnishee of
Joseph Clark and
William H Study

Bill of Exceptions

Be it remembered that on the 3d day of January A. D. 1860 at the January Term of said Court holden in the City of Chicago in the State of Illinois before the Hon Grant Goodrich Judge of said Court and a jury duly impannelled came the said plaintiffs and the said Farell Garnishee upon the issue joined herein on the answer of the above named garnishee.

The above named plaintiffs to maintain and prove the issue on their part produced and caused to be sworn as a witness —

Robert Hervey, who testified as follows. I am an attorney and counsellor at Law, reside in Chicago. I know the plaintiffs and the garnishee Farell, I first saw him in company with the Pearson one of the plaintiffs. It was about the 12th day of August A.D. 1859 Mr Pearson called with Mr Farell to see about claim against Clark & Study said that Mr Farell owed them and had been or was to garnisheed.

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Mr Farrell stated in my presence that he owed them Clark & Study $25 ~~00~~ in two notes for flour and horses purchased of them, did not say anything about its being a conditional bargain - said he owed them so much.

Pearson & Co and Farrell then entered into the following contract drawn by me and signed by them as follows

Memorandum of agreement between G. C. Pearson & Co of Chicago and Joseph Farrell of Tamarora Perry Co.

Whereas Farrell is indebted to Clark and Study late of Pinckneyville, Ills. in $25 ~~00~~ on two notes One for $100 due 1st Sept and the other for $15 ~~00~~ due 4th Oct 1859 and whereas said Clark & Study are indebted to Pearson & Co in a large sum and whereas said Farrell has been garnished by Pearson & Co as a debtor of said Clark & Study and whereas it has been agreed between said Pearson & Co and said Farrell that Farrell shall endeavor to obtain any information he can about the present whereabouts of said Clark & Study and shall furnish same to said Pearson & Co and shall also do what he can to enable the said Pearson & Co to recover the said sum of $25 ~~00~~ from him said Farrell as such garnishee now if said Farrell shall furnish to said Pearson & Co all the information he obtains about said Clark & Study's whereabouts and should succeed in enabling the said

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Pearson & Co to collect of him the said $25⁷⁄₁₀₀ then said Pearson & Co shall pay said Farrell or allow him to deduct from said amount of $25⁷⁄₁₀₀ Fifty Seven Dollars for his trouble & services & a proportionate sum for any less amount that may be received from him than said $25⁷⁄₁₀₀.

Chicago 12 Aug 1859

(Signed) G C Pearson
Joseph Farrell

which was here offered in evidence it was drawn by me and signed in my presence Mr Farrell also then signed the advertisement as follows "Caution. All persons are cautioned against purchasing or negotiating two promissory notes dated 3ᴰ or 4ᵗʰ inst of August A.D. 1859 One for $100 payable in 30 days and the other for $15⁷⁄₁₀₀ payable in 60 days made by me and payable to Clark and Study or order dated at Tamaroa Perry County Illinois, as I have been garnisheed by Creditors of said Clark & Study on account of my said indebtedness to them.

Tamaroa Ills 12 Aug 1859

(sigd) Joseph Farrell."

which was also here introduced in evidence—

The Plaintiffs then introduced and read in evidence the following letter & telegraph dispatch which were admitted to be genuine.

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Cincinnatti Aug 17th 1859

Mr. G. C. Pearson

Sir on my arrival here I found a letter from my young man stating that Study had been there and had redeemed the three Horses which he sold me, I bought them from him with the condition that if he paid me my money back and their keeping inside of two weeks, he could take them back, when I saw you I had no idea that he would redeem them, But while I was away he goes to young Watson tells him a Cock and Bull Story, I suppose and talks him out of the horses and returns to him my notes which I gave him as soon as I received the information I telegraphed you that I thought he had gone to St Louis to make sale of them, and if you would start after him you might catch him and the horses there. While I write now I suppose you are on your way to St Louis, after him in consequence of the dispatch. I sent the dispatch cost me $2.40 on receipt of this please let me know if you have any thing, I will write you as soon as I get home if I hear anything

Yours Obt
(sigd) Joseph Fancel

Western Union Telegraph Company No
To G. C. Pearson & Co

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234 Lake St Cincinnati 16/859

I have just learned that Study has redeemed the three (3) horses which privilege he had. I think you can catch him in St Louis he left Tamaroa Monday morning before day.

Joseph. Farrell.

which were admitted to be from said Farrell to said plaintiffs & by them introduced & read in evidence to the jury.

On his cross examination he testified I did know afterwards of the Pearson and a Detective Officer being about to start for Clark & Study, Mr Pearson was in my office after he returned I understood from him that he got nothing from Clark & Study I understood although I do not know that he said so that he got from them one of the horses bought by Farrell the language he used as near as I can recollect was we have recovered one of the horses or a horse he did not say that it was one of that Farrell bought from Clark & Study. The defendant Farrell to maintain the issue on his part introduced the deposition of Watson as follows:

Deposition of Watson

Interrogatory First. What is your name age occupation & place of residence?

Answer My name is Samuel H Watson I am clerk in a store. I am twenty one years of age — I reside in

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Tamaroah Illinois.

Second – Do you know the parties to this suit or either of them and which?

Answer – I know all of them – Except Mr Pearsons partner Grace

Third – Do you know anything of any horses or other property being in the possession of Mr Farrell – in which Clark & Study had any interest and if so relate the particulars.

Answer – Yes Sir I know of him having three horses & harness in his possession & wagon belonging to Clark & Sturdy – Sturdy brought the horses to Mr Farrells house and sold him the horses & wagon & harness and forty three barrels of flour – I do not exactly remember the number of barrells – The horses were sold conditionally he had ten days to redeem them at one hundred and fifty dollars for the three – Within the time he came and redeemed the horses of me during Mr Farrells absence, he was up here –

Fourth – Did Mr Farrell give you any instructions after he left Tamaroah for Chicago, in regard to the redemption of the horses?

Answer – No Sir none at all –

Fifth – Did he know anything about it?

Answer – No Sir not until after I had given up the horses – he was up here at the time & I wrote to him then.

24 Sixth – About when was this?

Answer- It was some time in August, I think about the first of August.
Seventh- Are those all the horses that you know of his having any interest in?
Answer- Yes sir-
Eighth- What became of the horses?
Answer Mr Sturdy came and redeemed them & took them off- I do not know what he did with them.

Cross Interrogatory

First Were all the horses & the flour bought conditionally?
Answer- The flour was not bought conditionally only the horses-
Second- Did he pay Clark & Sturdy for the flour at that time?
Answer- I think he paid them for the flour- at any rate he paid them some money.
Third- How much was he to give them for the flour?
Answer- I think it was three & 8/10 dollars per barrel
Fourth- Do you keep Farrells books?
Answer- I did at that time
Fifth- Were Clark & Sturdy credited with the flour on the books?
Answer- No. Sir-
Sixth- Did you see Farrell pay for this flour?
Answer- I saw him pay them some money and give them a note for the balance of the flour and horses and other property.

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Seventh Do you know how much money he paid them?

Answer No Sir I could not say.

Eighth - Was the sale of these horses & the flour one transaction?

Answer - I do not know as it could be considered one - they were all sold the same evening - but the flour was sold & the bargain closed before the horses were sold -

Ninth - What was the date of this transaction -

Answer - I think it was about the first of August - I could not say within two weeks with any certainty

Tenth - What was the condition upon which these horses were bought?

Answer - He was to give him one hundred and fifty dollars for the three - Messrs Clark & Moody were to have ten days to redeem them in - if they did not redeem them within ten days - the horses were to belong to Farrell -

Eleventh - Were you present when this bargain was made

Answer - Yes Sir I heard the bargain -

Twelfth How did this Sale happen to be made conditionally?

Answer - Farrell did not want to buy the horses but told him he would give them that much for them, and give them ten days to redeem them in -

26 Thirteenth - Was that the full value for the horses?

Answer- Mr Farrell thought that was all they were worth to him under the circumstances?

Fourteenth- What circumstances do you speak of?

Answer- Well he had all the horses he wanted of his own and it would not justify him to pay more for them.

Fifteenth- What was the reason- Clark and Sturdy were so anxious to sell them?

Answer- Mr Sturdy represented to Farrell that he wanted to keep those horses to pay a man that he owed in Chicago He wanted to save them for Mr Pearsons- that Mr Pearsons had offered him more than that for the horses That Mr Clark and he owed Pearsons- or something of that kind- and that he had offered them more for the horses than Farrell would give-

Sixteenth- Was there any written contract between Mr Farrell and Clark and Sturdy in reference to the sale of the horses-

Answer- I do not think there was- if there was I do not recollect it.

Seventeenth- Were the wagons and harness bought conditionally

Answer- I do not think they were-

Eighteenth How much was he to pay him for the wagon

Answer- I think it was fifty dollars. I think that included the wagon and harness both-

Nineteenth- Was that paid for at the time?

Answer- It was not paid for in money, (it should not have been for he never got it) Part of answer in parenthesis is

objected to by Plaintiffs Attorney as not being an answer to the question—

Twentieth— What evidence did he give Messrs Clarke & Sturdy that he owed them for the balance of the property?

Answer— He gave them his note for that balance—

Twenty first— What was the balance?

Answer— I think it was two hundred and fifty dollars. Beside the above property he bought some feed stuff and Empty Barrells I do not know whether they were included in that balance or not— I think likely they were—

Twenty Second— What was he to give for the feed stuff and empty barrells?

Answer— There were ten barrells of feed stuff and I suppose about two hundred pounds in a barrell— He was to give a dollar a hundred for the feed stuff— The barrells were worth 45 to 50c a peice— but I do not know what he gave for them.

Twenty third— What was the amount of the not he gave to Clarke and Sturdy—

Answer— Two hundred and fifty dollars to the best of my recollection—

Twenty fourth— Did he give them any other note—

Answer— None that I know of— I now recollect that he gave ~~two notes~~ one for one hundred dollars and one for one hundred and fifty instead of the two hundred and fifty dollar note—

Twenty fifth— When were those notes payable?

28 Answer— One was payable in thirty days and one in sixty

from date
Twenty sixth – Were they ordinary promissory notes?
Answer – Yes Sir
Twenty Seventh – What was the date of these notes –
Answer – I think it was some time about the first of August
Twenty Eighth – About how many days after this transaction did Farrell go to Chicago –
Answer – Two or Three days –
Twenty Ninth – About how many days after Farrell left did Sturdy take the horses away?
Answer – Four or five – I am not certain which.
Thirtieth – Did Farrell write to you that he had been garnisheed.
Answer – He wrote to me that he had been garnisheed after I had written to him that I had given up the horses
Thirty first – How long after you had given up the horses did you write to him.
Answer – I wrote the next morning – I do not recollect the date of my letter –
Thirty second – When you gave him back the horses did he give you back both the notes?
Answer – He gave me back both the notes and I gave him one for one hundred dollars in place of them.
Thirty third – What was the date of this note you gave him –
Answer – I do not recollect the date – It was payable in Sixty days from the night I gave it to him
29 Thirty fourth – Were you authorized to sign Mer

Farrell's name to promissory notes?
Answer- No Sir- not by him-
Thirty fifth- Had you ever signed one before-
Answer- Never
Thirty sixth- How did you happen to give this note?
Answer- Mr Farrells wife advised me to give the note
Thirty seventh- Why did she advise you to give it-
(objected to)
Answer- I told her of the contract between these men and Mr Farell- and told her of the notes which they held of his- and Sturdy agreed to give me up those two notes if I would give him a new one, and sign Mr Farells name to it, for one hundred dollars, payable in sixty days- so she thought I had better do it.
Thirty Eight- Has this last note been paid?
Answer- I do not know.
Thirty Ninth- What did Mr Farell say about you giving a new note-
Answer He said I did wrong in doing it-
Fortieth- Did he speak so in reference to his being garnisheed?
Answer. He told me he was garnisheed but he said that I did wrong in giving his note without his consent.
Forty first- How long after you had written to Mr Farell did you receive his letter stating that he was garnisheed?
Answer- It was between two and five days.
Forty second- How long does it take a letter to go

from Tamarroah to Chicago
Answer - About fifteen hours I should think after it gets started -

Direct Examination resumed

Interrogatory Ninth. What became of the wagon and harness referred to by you before?
Answer - They were taken by Clark & Sturdy's Creditors I took possession of them as agent for Mr Farrell but they were never removed from premises of Clark & Sturdy

Saml. H. Watson

The defendant Farrell to maintain the issue on his part then produced Joseph Clark as a witness who was sworn in Chief. Whereupon plaintiffs objected to his competency as a witness and desired to examine him as to the same to which defendant objected then on the ground he had been sworn in Chief to which Defts Counsel objected because he was a party to the original suit and Court overruled the objection and Deft excepted he then testified that he was one of the defendants in the original suit and judgment in which this garnishee process issued plaintiffs Counsel objected to admissibility of witness testimony 1st because of his interest in event of suit & 2d because of his being a party to the record Court overruled objection and allowed witness to testify to which decision of the Court the plaintiffs by their Counsel excepted. witness then testified as follows - I know Pearson one of the plaintiffs and

Farrell I was one of the firm of Clark & Sturdy. Two of the horses which Farrell had we sold and one Pearson got. He got nearly all the price of the other two horses about $81. I told him that it was the money we got from the sale of the horses.

Cross Examination

I think the horses were taken away from Farrell on the 15th August. Sturdy told me he took them away then. I did not see them till the 17th August. I first saw them at St Charles Missouri. the horses were taken there by Charles Griffin a person in our employ the two horses were sold on the 23d August at St Louis. both to same man for $125. I dont know the name of the purchaser. One of the horses was six the other eight years old. they were good horses, we paid $100 a peice for them. I sold the horses and received the pay for them I gave Pearson $80 or $81 - on reflection I think it was $79-55 that I paid him. I paid him the money at Blue Island or Illinoistown. I paid it on the 25th August. I paid it in presence of F C Bradley & Study I took no receipt from Pearson for the money. we tried to settle. I told him I would give him all the money I had & he said he would send my wife home My wife and two children were then at St Louis. One of the Children was ten and the other twelve years of age my wife and my children were going to Middletown Pennsylvania they went there. I

did not pay their fare. Pearson told me he paid my wife's and childdren's fare. My wife remained at Illinoistown two days she had some money. I dont know (2) how much. Pearson told her to keep it. The agreement was that he should pay her and the children's fare. Bradley arrested me & Study at that time the same day he started with us to Chicago. Study's wife and boy five years old were also at Illinoistown My wife and Childdren & Study's wife and child came to St Louis after us, our families had been previously living at Perry county Illinois. Our wives disposed of their furnitnre before going to St Louis Mrs Study and her child went to Wabash Indiana after Study & I had been arrested, she was present when Study & I were under arrest at Illinoistown Mrs Study gave Pearson money to buy her tickets to Wabash she paid him the money with her own hands. I did not see how much money she paid him, did not see her hand the money to him — saw her take it out of her purse. My wife handed me the $79.55 which I gave to Pearson, She handed me $69.50 of it, the other $10 I had. Both our wives were present at the time the money was paid Pearson, Pearson paid part of my & Study's fare from Illinoistown to Chicago. I think the fare was $20 — Pearson paid $10 of it and Bradley $10. plaintiffs counsel here showed witness the following memorandum viz.

P S

C. P. Bradley Dr to Pearson

To Expenses of Policeman to St Charles	$3.50
" Tickets fare R.R. of C & Study	15.00
" pd Bradley Expenses & C & Sat Minierstown	3.00

Received Mrs Clark	$67	
Mrs Study	12.50	
		79.50
Tickets Mrs Clark	52.00	
		27.50
Mrs Study Tickets	10	
		17.50
Clark & Study Fare	15.00	
Mrs Study Hotel bill	2.50	

And asked witness whether it was not in the handwriting of the plaintiff Pearson to which witness answered that he could not certainly state, that he had seen Pearson write had received letters from him and that the memorandum looked like his writing. plaintiffs Counsel then asked witness whether the memorandum truly stated the sums of money paid by witness and Mrs Study to the plaintiff Pearson & of the disposition he made of it, to which question Counsel for defendant objected, which objection the Court overruled, to which exceptions were taken and the witness then answered that he could not state whether the memorandum showed the amount of money

paid by Pearson or the sum paid by him for the tickets and expenses of Mrs Clark & Study or not. Cros. Exam. Continued. I delivered the horse to Pearson. Plaintiffs Counsel here showed witness the following receipt— "Received of G.C. Pearson One Hundred dollars being in full for a bay horse bridle and saddle the latter which we guarantee.

This 24 day of Aug
St Louis Mo 1859 Clark & Study"

this receipt was signed by one I think. Pearson wrote it. I am acquainted with his hand writing have seen a good many of his letters. It resembles his hand writing I think Bradley Mey and Study Hotel bill at Illinistown. I paid Bradley $8 when he searched me my wife told Pearson that the money she handed me was all she had. Pearson went to St Louis to order Mrs Clark & Study's furniture to be returned. I gave $70. of the proceeds of the two horses sold to my wife.

Cros Examination here closed plaintiffs Counsel then introduced in evidence & read to the jury the receipt above mentioned—

In reply to a question by Defendants Counsel witness stated that the horse was taken in part settlement of this debt in which the defendant was garnisheed—

25 The foregoing was all the testimony and evide

-ce given upon the trial of the said Cause-
Whereupon the said plaintiffs requested the said
Judge to charge the said Jury as follows:

Pltffs' — Instructions

1st If the Jury believe from the evidence that at the
time the garnishee Farrell, was served with process
he was indebted to the defendants Clark & Study in
the sum of Two Hundred and fifty seven dollars
or any other sum of money, he cannot exempt him-
-self from liability as such garnishee, by showing
that subsequent to such service of process on him,
he paid such defendants the amount due them or
redelivered to them the property which they had
sold, or delivered to him, and which he had at the
time of such service of process, unless he also shows
that such payment was so made, or such property
so redelivered with the knowledge or assent of the
plaintiffs express or implied.

2nd If the Jury believe from the evidence that at the
time the garnishee Farrell was served with process, he
was in possession of property which he had previously
bought on credit from the defendants Clark & Study
and for which he was then owing he cannot exempt
himself from liability therefor in this proceeding
by showing that the sale was a conditional one
and subject to a right of redemption in such de-
-fendants, and that they had redeemed such proper-
36 -ty subsequent to such service of garnishee process.

3rd If the jury believe from the evidence that at the time of the service of process of garnishment on Farrell in Chicago he was in possession of property belonging to the defendants Clark and Study - that such property was then at Tamaroa in Perry County Illinois, and was subsequent to such service redelivered to the defendants Clark and Study by the agent of said Farrell. but that such redelivering did not take place until after the lapse of more than a reasonable time from the service of such garnish-ee in which notice thereof might have been com-municated by said Farrell to his agent at Tam-aroa, then the jury should find a verdict for the plaintiffs and assess their damages at the sum which said Farrell agreed to pay for said property unless they shall further believe from the evidence, that with a full knowledge of all the facts the pl'ff in the execution obtained in part satisfaction of their debt the whole or a part of the identical property which he had in his possession belonging to Clark & Study, or for which Farrell owed Clark & Study.

The Garnishee process would not render Mr Farrell liable for what might be done upon negotiable prom-isory notes given by him to Clark & Study which notes had not matured, unless the same were delivered up to Farrell by Clark & Study before his answer.

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Where property is not in the actual possession of a person served with the Garnishee process but is in the possession of an agent of the garnishee, he is entitled to a reasonable time to notify his agent and protect the property, before he will be liable for an act of the agent which may hence deprived him of the possession of the same in the ordinary course of his duty with reference to the property. —
which said charge was given by the Judge to each portion of which the said defendant Farrell then and there excepted —.

The counsel for said Farrell thereupon requested the said Judge to charge the Jury as follows.

Instructions asked by Farrells Counsel

1st Refused

The Jury cannot find for the Pltffs the value of the horses if the Pltffs received their or the proceeds of them with knowledge after the Garnishee process issued or was served.

2° Refused

The accepting of the one horse and of the proceeds of the others or a portion thereof is evidence of an assent on the part of the Pltffs to the action of Farrells Clerk in delivering up the horses even if it was done after the service of process upon Farrell

3 Refused

Deft Farrell cannot be charged for the value of any property to the delivering up of which, after service of Garnishee process, he assented or of which he had

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accepted the proceeds.

4 Refused

If the jury believe that there was a conditional bargain between Clark & Study & Farrell and that it was rescinded even after Garnishee process was served upon Farrell and the Plaintiffs with knowledge choose to pursue the property they cannot recover against Farrell.

5 Refused

The Plaintiffs cannot pursue both the property and the garnishee. They must elect which they will follow and having elected they are bound by such election

6 Refused

If the jury believe that by any arangement between the Plffs & Farrell, They undertook to pursue and did pursue the property, and recovered the same or the avails thereof, that then, for such property so received, or the avails of such, as may have been sold, which may have been received by the Plffs, knowing that it is the avails of any property in the possession of Farrell, at the time of service, Farrell will not be liable. —

each of which marked as refused the said Judge refused and the said defendant then and there excepted to such refusal. the said Judge of his own motion then charged the jury as follows:

7 If the jury believe from the evidence that after the

service of the garnishee process upon Farrell, he delivered up to defts any portion of the property in his hands which belonged to the defendants in the execution and that the plaintiffs pursued and recovered any of such property from the said defendants with knowledge of the facts then the value of such property cannot be recovered against Farrell But if the defendant in the execution, sold any of such property without the direction of the plaintiffs in the execution though the whole or a portion of the money received for such property may have been paid to them, still the garnishee Farrell would not thereby be exonerated from his liability as garnishee in this case, for so much of said property or indebtedness. —

to which the said defendant then and there excepted, the said issue was then ~~and there~~ submitted to the jury who retired and after consultation returned their verdict into Court That they found for the plaintiffs and assessed the Damages at $257. the said Defendant by his Counsel then moved for a new trial and arrest of Judgment upon the following grounds.

1st The Court erred in giving the various instructions to the jury.

2d the Court erred in refusing the instructions asked by defendants counsel

41 3d The jury found the verdict directly against

the Charge of the Court inasmuch as they found for the full value of the property, and it was undisputed that one of Hoses had been received by plaintiffs and applied upon said debt—

4th " The verdict was too much

5th " The verdict was against the evidence and should have been in favor of Farrell.

which motion was overruled on the 25th day of February A.D. 1860 Judgment rendered and to all which rulings and decisions of the Court the Counsel for said Farrell then and there duly excepted and an appeal was then and there prayed by said Defendant which appeal was allowed upon Defendant filing bond to be approved by the Court in the penalty of $350.00 and ten days was given within which to file bill of exceptions which time was afterwards by order on the 5th day of March 1860 extended twenty days.

And the said Farrell prays that the foregoing bill of Exceptions may be duly signed which is done

Grant Goodrich (Seal)

4/1

State of Illinois
County of Cook } S.S.

I. Walter Kimball Clerk of the Superior Court of Chicago. in and for said County. do hereby certify that the foregoing is a full. true and Complete Transcript of all the papers on file in my office. and of the proceedings and judgment entered of record in said Court. in the Case wherein Gustavus C Pearson & John H Fraser, are Plaintiffs and. Joseph Farrell defendants.

In testimony whereof I hereunto subscribe my name. and affix the seal of said Court at. Chicago in said County this 2nd day of May A.D. 1866

Walter Kimball Clerk

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State of Illinois
Supreme Court

Joseph Farrell
Garnishee &c
Plff in Error
vs
Gustavus L Pearson
John A.F. Grace

And now comes the said plaintiffs in Error by Smith & Dewey his attorneys and says that in the record & proceedings aforesaid and also in giving the judgment aforesaid there is manifest Error in this to wit.
The judge erred in refusing to give to the jury the 1. 2. 3. 4. 5 & 6 instructions asked by the said Joseph Farrell.

2d The Judge erred in giving the instructions so given by him of his own motion & the jury.

3d. The judge erred in overruling the motion for a new trial

4th In that the verdict was directly against

the Charge of the Court

5th In that the verdict was against the evidence and is not supported by it.

6th In that the verdict is to large.

7th The Court erred in excluding Evidence offered by said plaintiff in error.

8th The Court erred in admitting improper Evidence by the defendants in error

And the said Joseph Farrell prays that the judgment aforesaid, for the errors aforesaid and other Errors in the record and proceedings aforesaid may be reversed annulled and altogether held for nothing. and, that he may be restored to all things which he hath lost by occasion of the said judgment &c

Smith & Dewey
Attorneys for Farrell.

Let a supersedeas issue
Bond $500 — Michael Kelly Surety
L. D. Eaton

~~406~~ 92-50

G. C Pearson et al

vs.

Joseph Farrell Jarvis

Filed May 26. 1860

L. Leland

Clerk

Fees. $11—

Paid by S. S. Smith 1860