No. 14833

Supreme Court of Illinois

Humphrey

vs.

Taggart

71641

14833

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 228

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

Humphrey
vs
Taggert

Supreme Court of Illinois.

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1864.

JOHN W. HUMPHREY,
vs.
CHARLES F. TAGGART.
} ERROR TO STEPHENSON CO.

1424

Points for Defendant in Error.

The only point made is the sustaining a demurrer to the 5th plea.

It is true that the record does not recite the fact of filing the demurrer at the time it was filed, yet the Record (page 26) recites as follows:

And now comes on to be heard the demurrer to the 2d, 3d, 4th ane 5th pleas, and the court being fully advised in the premises, it is ordered that the demurrer be sustained.* If, therefore, that plea is law, there is no error in the record.

It is assumed in the brief of counsel, very quietly, that this plea is good, and the error of sustaining a demurrer to it fatal.

April Term 1864
L Lincoln Clk

+ Central M. T. RR Co vs Rockafellow 17 Ill. 549
and
Wade v. Killoch 3. Stew. + Port 431

* Abstract does not correctly set out the breaches — Record pp 6–11–15–

Let us see. The Narr. alleges as breaches of the bond sued on:

1. That Humphrey (the principal in the bond) did not prosecute his appeal with effect and without delay.

2. That the said Humphrey did not save and keep harmless the plaintiff in replevying the said property, but that plaintiff was compelled to pay $2,500 for taking said property. *

2d couut is the same, except that it sets out the proceedings in the suit, by which plaintiff was compelled to pay $1850, for replevying said property, besides $91.90 costs.

3d count, breaches substantially the same.

Now this 5th plea says nothing at all as to the 1st breach, viz: that Humphrey did not prosecute his appeal with effect.

A plea that professes to answer all the declaration, and does ahswer but a part, is bad.

2. An averment that they did save and keep harmless the said plaintiff in replevying said property, is bad, as avering simply a conclusion of law. What did they do to save him harmless from the judgment which the declaration shows was rendered against him in the Circuit Court of the United States? Did they pay the judgment? Did they pay the plaintiff? How did they keep him harmless?

3. When did they make return of the property? After the judgment was rendered against plaintiff in the Circuit Court of the U. S., and after the payment of it, as stated in the declaration, a return then would not be good; and there is no showing in the plea that the return was made before that time.

The plea is bad in any view of it. The other pleas are so obviously bad that plaintiff in error does not make a question upon them, and we need not argue them.

GLOVER, COOK & CAMPBELL,

For Def't in Error.

John W Humphrey
Lucius S Bowles &
Silas D Blount
vs
Sebastis F Taggart

In the Supreme
Court of the State
of Illinois April
Term AD 1865

Error to Stephenson

To Leland & Blanchard
Attorneys & Counsel for Plaintiffs in Error

You will please take notice
that on Wednesday the 5th day of April AD
1865 or as soon thereafter as the same can be
heard We shall enter a motion in the Supreme
Court of the State of Illinois at the April Term thereof AD 1865 to be holden at Ottawa in the Third
Grand Division for a re hearing of the above
intitled cause.

Dated at Freeport Ill this 28th day of
March AD 1865

Burchard & Barton
Counsel for Defendant
in error.

Glover Cook Dawes & Bailey
& Woodruff

We hereby admit due service of the foregoing
notice on us by copy this day of
AD 1865

Leland & Blanchard
Counsel for Plffs in error.

228

John W Humphrey

vs

Chas T Taggart

Notice

Filed 4/10 5. 1865

L Leland Clk

Not allowed

Know all men by these presents that we John W. Humphrey, Lucius M. Cowles, Silas D. Clark and William A. Wright of the County of Stephenson, in the State of Illinois are held and firmly bound Charles S. Taggart, in the penal sum of One Thousand Dollars, lawful money of the United State, 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 Fifth day of April A.D. 1864

The Condition of the above obligation is such, that Whereas, the said Charles S. Taggart, plaintiff, did, on the Thirtieth day of December A.D. 1863, in the Circuit Court of the County of Stephenson, in said State of Illinois, at the December Term A.D. 1863, thereof, recover a judgment against the above bounden John W. Humphrey, Lucius M. Cowles and Silas D. Clark, defendants in an action of debt for the sum of Twenty five Hundred Dollars debt, and Six Hundred Twenty nine Dollars and fifty cents damages, and costs

of suit, from which judgement the said John W. Humphrey Lucius H. Cowles and Silas D. Clark have sued out a writ of Error to the Supreme Court of the State of Illinois; now, if the above bounded John W. Humphrey, Lucius H. Cowles and Silas D. Clark shall duly prosecute their writ of error, and shall pay said judgement, costs, interest and damages, in case the said judgement shall be affirmed, then the above obligation to be void; otherwise to remain in full force and effect

In presence of
Wm. D. Dimmick

J. W. Humphrey seal
L. S. Cowles seal
S. D. Clark seal
Wm. O. Wright seal

144 167

228-178

D B Humphreys Exrs

vs

Chas L Taggart

Bond

Filed April 15. 1864

L. Leland

Clerk

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

To the Clerk of the Circuit Court for the County of Stephenson Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Circuit Court of Stephenson County, before the Judge thereof, between John W. Humphrey, Lucius S. Bowles & Silas D. Clark

plaintiffs and Charles F. Taggart

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

as we are informed by their complaint and we being willing that error should be corrected, if any there be, in due form and manner, and that justice be done to the parties aforesaid, command you that if judgment 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 A.D. 1864 ~~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~~ Pinckney H. Walker, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this fifteenth day of April in the Year of Our Lord One Thousand Eight Hundred and Sixty four

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



John W. Humphrey

Etals

No. 144 *vs.*

Charles F. Taggart

WRIT OF ERROR.

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

L. Leland

Clerk.

~~L. J. B. Blair Deputy~~

FILED April 15th A. D. 1864

L. Leland

Clerk.

John W Humphrey
Lucius S Bowles &
Silas D Clark.
as
Charles F Taggart

In the Supreme
Court of the State
of Illinois April
Term. AD. 1865.

Error to Stephenson.

To Thomas J Turner Esq
Attorney & Counsel for Plaintiff in error.

You will please take notice
that on Wednesday the 5th day of
April AD 1865 or as soon thereafter
as the same can be heard I shall
enter a motion in the Supreme Court
of the State of Illinois at the April Term
thereof AD 1865 to be holden at Ottawa
in the third Grand Division for a
re-hearing of the above entitled cause.
Dated at Freeport Ill this 25th day
of March AD 1865

Burchard & Barton
Counsel for Defendant
in error.

I hereby admit due service of the above
notice on me by copy this 25th day of
March AD 1865

T. J. Turner
Counsel for Plff in error.

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John W. Humphrey

et al

vs

Chas P. Taggart

Notice to counsel
of Petts in error

Filed Apl 5. 1865
L Lemmon Clk

SUPREME COURT OF THE STATE OF ILLINOIS.

THIRD GRAND DIVISION.

JOHN W. HUMPHREY,
LUCIUS S. COWLES,
and SILAS D. CLARK,
vs.
CHARLES F. TAGGART,

Error to Stephenson.

Petition for Re-Hearing.

The defendant's counsel pray the Court for a re-hearing of the above entitled cause, and a consideration of the following legal propositions that seem in the opinion of the counsel to arise upon the pleadings, and be decisive of this case.

The defendant's counsel do not desire to question the correctness of the propositions of law recognized in the opinion filed in this case, but wish to show that they do not apply to this suit upon the pleadings before the Court. Admitting *them*, other and graver propositions, as they believe, apparently not examined by the Court, and in conflict with the current of decisions and authorities, must be established to hold the plea in question, (5th) not liable to demurrer, and a sufficient answer to the breaches assigned in the declaration, or to hold that a demurrer would lie to the declaration.

Your petitioners therefore respectfully ask the attention of the Court to a statement of the pleadings, as the abstract of the plaintiff in error is imperfect and incorrect, and has occasioned, as your petitioners believe, a misconception of the pleadings and the cause of action disclosed by them.

The Bond contained the usual conditions, except that as stated in the opinion of the Court, the condition to make return of the property replevied if return should be awarded by the Court, was limited to "awarded by the Stephenson County Circuit Court." As no such award was ever made by that Court, counsel in drafting the declaration were aware and admit that no action could be sustained for a breach of *that condition*. The declaration assigned breaches of the *other* conditions of the bond, but none for *this*, as follows:

First Count—breaches of the first, second and fourth conditions of Bond; that plaintiff in replevin suit did not "prosecute the suit to effect" and "without delay," and "save and keep harmless Sheriff in replevying the property." See Record Page 6 - line 11 & 12

Second Count—breaches of first and fourth conditions.

That he did not "prosecute his suit to effect" and "save and keep harmless Sheriff, &c." See Record page 11 line 16

Third Count—breach of the fourth condition: "That he did not save and keep harmless Sheriff, &c." Record Page 16 line 21

There are five pleas:

1st. To the first Count—*Non est factum.*

2d. To second and third Counts—No *retorno habendo* awarded by Circuit Court of Stephenson County.

3d. To second and third Counts—Cowles and Clark plead that they signed as sureties, and no *retorno habendo* awarded by said Court.

4th. To declaration—Cowles and Clark plead that the damages to Sheriff were in consequence of his taking insufficient Bond.

5th. To declaration—All plaintiffs in error plead that they did save and keep

harmless Sheriff in replevying property, and did make return of property replevied.

Demurrer was sustained to all but first plea.

The opinion filed in the case seems to hold not only that the fifth plea is sufficient to bar the action, but that the declaration discloses no right to bring suit, and that the Bond itself is void.

That second, third and fourth pleas are bad is admitted; but error is assigned for sustaining demurrer to fifth plea. Is this plea good as an answer to the cause of action as set forth in the declaration?

It is apparent from the above review of the pleadings that the fifth plea answers only one of the breaches of the conditions of the Bond, as assigned in the declaration.

It answers the third Count of the declaration, but does not answer the breaches assigned in the first Count—"failure to prosecute the suit to effect, and without delay," and breach assigned in the second Count—"failure to prosecute suit to effect." It simply answers the breach assigned in the third Count and one of the breaches assigned in the other Counts of the declaration—"that Humphrey did not save and keep harmless the Sheriff in replevying the property."

If a failure to "prosecute a suit to effect," or to "prosecute without delay," is a breach of the conditions of the Bond and will support the action, then a plea purporting to answer the whole declaration, commencing "*actio non*," and omitting to answer these breaches, cannot be good.

"It is a rule that every plea must answer * * * all it assumes in the introductory part to answer, and no more."—1 *Chitty Plead.* 523.

"If a plea profess in its commencement to answer the whole cause of action, and afterwards answers only a part, the whole plea is bad."—1 *Chitty Plead.* 524.

It "is obnoxious to demurrer."—Snyder *vs.* Gaither, 3 *Scam.* 92. Moir *vs.* Harrington, 22 *Ill.* 40. Marsh *vs.* Bennet, 22 *Ill.* 313. Goodrich *vs.* Reynolds *et al*, 31 *Ill.* 490.

Is not, then, a "failure to prosecute the suit to effect," or "failure to prosecute it without delay," although other conditions are performed, actionable?

Must not all the conditions of the Bond, being in the conjunctive, be fulfilled to avoid its forfeiture, and upon failure in the performance of either will not the obligors be liable to suit? Does not the law presume and award nominal damages, although actual damages are not proved?

The following authorities seem to be decisive of this point?

"The conditions of the (replevin) Bond are distinct and independent of each other, and a breach of any one of them will occasion a forfeiture."—*Morris on Replevin*, 190–195.

"The condition of the Bond is broken and the Bond forfeited as well by not prosecuting the suit with effect, as by a default in making a return."—*Morris on Replevin*, 191.

"Where the condition is to prosecute the suit with effect and without delay, a breach in those words would suffice, and proof of two years' delay would suffice without proving a judgment of *non pros.*"—Hurder *vs.* Sherman, 2 *Scam.* 544, *citing* 4*th Bing.* 586.

"The declaration need not negative both parts of the condition. If the plaintiff was *non prossed* the breach may be that defendant did not prosecute his suit with effect, without stating he hath not made a return."—2 *Chitty Plead.* 463, *Note p; and* 461, *Note k, citing* 4*th J. B. Moore*, 606. Turner *vs.* Turner, 2*d B. & B.* 107, *S. C.* Dunbar *vs.* Dunn, Assignee, 10*th Price* 54.

In Buckmaster *vs.* Beames, 4 *Gil.* 444, the breaches assigned were failure to prosecute suit with effect; also, to pay cost and condemnation money; also, to make return, the Court on page 446 say that a plea to the whole declaration averring a return of

the property, would be bad as answering but one of the breaches, and in not answering the breach of failure to prosecute suit to effect.

If a demurrer will lie to the declaration, is it because the Bond is utterly void, or because the cause of action is not well pleaded?

Will a condition of the Bond, more liberal for the obligors than the statute would require, excuse the performance of its conditions?

The case of Sharp *vs.* Bedell, 5 *Gil.* 88 does not decide that the Bond upon which the suit was brought, was void. On the contrary the Court admit it to be good as a voluntary Bond, but it is there decided that evidence showing a judgment rendered by the Circuit Court of McDonough County would not sustain a breach assigned for not performing a condition to pay whatever judgment should be rendered by the Circuit Court of Hancock County. It simply decides that *such evidence* would not show a forfeiture of that Bond; but it does not decide that no action could be sustained upon such Bond for breach of other conditions, as if the appellant had failed to prosecute his appeal to effect.

The following authorities hold that a Bond not in strict conformity with the statute is good as a voluntary Bond, and decide that such Bond is not void, and that a breach of its conditions would be actionable:

Fournier *vs.* Faggatt, 3 *Scam.* 347. Ballingall *vs.* Carpenter, 4 *Scam.* 306. Young *vs.* Mason *et. al.*, 3 *Gil.* 55. Todd *et. al. vs.* Cowell *et. al.* 14 *Ill.* 72.

The counsel have not been able to discover defects in the declaration that require amendment, if any action can be maintained upon the Bond. The rules of pleading, although they require pleas to answer all the breaches assigned in the declaration, permit several breaches to be stated in one Count, and the Practice Act also allows it.—*R. S.* (1845) *chap.* 83, *sec.* 18. 1 *Chitty Plead.* 587.

The declaration presents the causes of action in the established forms approved by Mr. Chitty and other eminent pleaders. The plaintiffs in error, if they claim the Bond to be void, are seeking to take advantage of their own wrong in giving a defective Bond. Their pleadings fail to deny, but admit that they did not "prosecute their suit to effect" and "without delay." The damages occasioned to the defendant in error by their non-performance of the condition, were proved up and assessed against them, and without proof he would have been entitled to nominal damages.

In conclusion, then, as the whole case now stands before the Court, upon the pleadings, and a full re-hearing will save the necessity of bringing the parties again before this Court to examine and decide the points above mentioned, counsel ask that the cause may be re-considered, confident that the Court will affirm the judgment sustaining the demurrer to the pleas upon re-examination of the same.

BURCHARD & BARTON,
Counsel for Defendant in Error.

Additional Suggestions

Humphreys
vs
Taggart

Petition for rehearing.

I think the imperfect abstract filed has misled the court as to the question in the case upon the 5th plea.

The declaration contains the following breaches- 1st bount the breaches are that defendant did not "prosecute his suit to effect and without delay" and that he did not save and keep harmless the Sheriff.
2nd bount- That he did not prosecute his suit with effect and save and keep harmless the Sheriff.

Question 1st: Is this a good declaration or in other words can a suit be brought upon this bond for a failure of the plaintiff to prosecute his suit with effect and without delay. Of course there is but one answer to this question, both by reason and authority an action may be sustained for a breach of this covenant alone-
Murder vs Sherman 2 Scam 521.
and I respectfully submit that in an

action brought for a breach of that covenant, a discussion of the point whether the covenant to make return of the property in case return thereof shall be awarded by the Circuit Court of Stephenson County is broken by failure to make return after an order of return of the U.S. Court, is utterly foreign to the question, and has no more to do with the case than the discussion of any other abstract question of law.

When plaintiff says I have sustained damages because you have not prosecuted your suit with effect and without delay, it is no answer to say as is said in that 5th Plea that they did save and keep harmless the Sheriff in replevying the property and did make return of the property.

Even if defendants did save and keep harmless the Sheriff in replevying the property and did make return thereof - still the plaintiff is entitled to recover his costs - expenses in the replevin suit, and whatever damages

he had sustained by reason of the loss of the use of the property - or in any other way by reason of the failure to prosecute the suit with effect and without delay.

Does the requirement in the Statute, that the bond shall be conditioned to prosecute the suit with effect and without delay, mean nothing other and different from the other, than the requirement that it shall contain a covenant to save and keep harmless the Sheriff, and make return of the property, are these covenants identical - if not then to say that defendant did save and keep harmless the Sheriff and did ~~make~~ return the property is no answer to an allegation that he did not prosecute his suit with effect and without delay. The fifth plea is not good and the decision of this Court of the last term can not be sustained.

The opinion of the Court that the declaration is bad amounts to this that no action can be maintained on this replevin bond upon the other covenants, because none can be

maintained upon the covenant to make return of the proceeds when return shall be awarded by Stephenson County Court. The declaration is a true state of the facts, and if this declaration is not good it is because no suit whatever can be maintained upon this bond.

B. C. Cook

Joshua W. Humphrey et al
vs
Charles H. Sayers

Replevin for Personalty

Filed in C. Ct. Nov 5, 1858
D. Gilmore Clk

2284/175

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

Pleas before the Honorable Benjamin R. Sheldon Judge of the Fourteenth Judicial Circuit of the State of Illinois and sole presiding Judge of the Circuit Court of Stephenson County in the State aforesaid and at a term thereof begun and held at the Court House in the City of Freeport in said County on the first Monday (being the 7th day) of December in the year of our Lord One Thousand Eight Hundred and sixty three and of the Independance of the said United States the Eighty sixth

Present. Hon Benjamin R. Sheldon. Judge.
Fred'k C. Ingalls. States Attorney pro tem
William H. Robey. Sheriff.
Attest. Edw'd P. Rodgers. Clerk.

Be it remembered that heretofore. to wit: On the 27th day of November A.D. 1863 the following Declaration was filed in said Cause to wit:

State of Illinois } ss In the Circuit Court
Stephenson County } of said County of the December Term A.D. 1863

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John W. Humphrey. Lucius S. Cowles. and Silas D. Clark were summoned to answer Charles F. Taggart Sheriff of said County of Stephenson, Plaintiff in this suit, of a plea that they render to the said Plaintiff the sum of twenty five hundred dollars lawful money of the United States which they owe to, and unjustly detain from him, and thereupon the said Plaintiff by Burchard & Barton his attorneys complains. For that whereas heretofore to wit on the fourth day of May A.D. 1860 at said County of Stephenson, the said defendant John W. Humphrey sued out of the Circuit Court of said County of Stephenson, a certain writ of Replevin against Tompson Heuser, Benjamin Zimmerman, and John F. Smith, directed to the Sheriff of said County, commanding ~~him~~ said Sheriff in case the said John W. Humphrey should give him said Sheriff certain Bond with sureties as set forth in said writ, to cause certain goods and chattels in said writ mentioned to wit: Forty one plain Black Bedsteads, Thirteen Spindle Bedsteads, Seven Cherry Bedsteads, Two Mahogany Bedsteads Forty Eight Whitewood wash Stands, Twenty Eight Mirrors, Two Hundred and thirty two Cane seat Chairs. Thirty three common Tables, Two wash stands, Fifteen Bureaus with mirrors Seven Round Tables, Sixteen Cane seat Rocking

Chairs. Seven Lounges. Three Sofas. Three
center Tables. Sixteen Mahogany Sewing Chairs.
Two marble top wash stands. Two marble top
centre tables. Seven Marquette Arm Chairs.
One Easy Chair. Four Marquette Easy Chairs.
Two Marquett Tete-a-tete. Thirteen Dining-room
Tables. Four red plush settees. Two Green Plush
settees. One long Gilt Mirror. Six vases.
Two reading room tables. One writing desk and
one center desk. to be replevined and delivered
to said John H. Humphrey without delay;
which said writ was then and there delivered
to said Plaintiff, he then and there being
Sheriff of said County of Stephenson, to be
by him executed in due form of law. and
thereupon the said defendants on the day
and year aforesaid, at the County aforesaid, in pursuance of the
terms and requirements of said writ and
of the Statute in such case made and
provided, made and executed under their
hands and seals and delivered to the said
Plaintiff, their certain Bond or writing ob-
ligatory, which said bond or writing obligatory
is now shown to the Court here, the date
whereof is the day and year aforesaid,
and therein and thereby did acknowledge
themselves, the said John H. Humphrey as
principal and said Lucius Shanks
and Silas D. Clark as securety, to be

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held and firmly bound unto said Charles F. Taggart Sheriff of said County of Stephenson in the penal sum of twenty five hundred dollars lawful money of the United States, for the payment of which sum the said defendants did thereby, jointly firmly and severally, bind themselves their heirs, executors administrators and assigns, which said Bond or writing obligatory was and is subject to a certain condition thereunder written, whereby after reciting to the effect following to wit: That said John H. Humphrey on said fourth day of May A.D. 1860. had sued out of the Clerks Office of the Circuit Court of Stephenson County, a writ of Replevin against Thompson Reese, Benjamin Zimmerman and John F. Smith, to replevy the above described goods and chattels of the value (as alleged in said writ of One Thousand Dollars) it was conditioned that if said John H. Humphrey should prosecute his said suit to effect and without delay, and make return of the property replevined if return thereof should be awarded by said Circuit Court of Stephenson, and should save and keep harmless the said Plaintiff, Sheriff of Stephenson County as aforesaid, in replevying said property, then said obligation should be void, ~~otherwise~~ be void, otherwise remain

in full force and effect and that afterwards
to wit, on the day and year aforesaid, said
Plaintiff so being such Sheriff as aforesaid,
caused said goods chattels and property
above described to be replevied and delivered
to said John W. Humphrey under and by
virtue of said Writ of Replevin, which
said goods chattels and property, the
said Plaintiff avers were then and there
of great value, to wit of the value of
twenty five hundred dollars, and such
proceedings were thereupon had in the
matter of said suit in Replevin in the said
Circuit Court of Stephenson County, that
afterwards to wit: at the April Term of
said Court A.D. 1860, said suit was removed
from said Court to the Circuit Court of the
United States for the Seventh Judicial
Circuit and Northern District in the State
of Illinois, which said last mentioned
Court thereupon took cognizance and had
jurisdiction of said suit in replevin, and
afterwards to wit at the October Term
A.D. 1860 of said United States Court holden
at the City of Chicago in said District
such proceedings were had in said suit
of Replevin that it was considered and
adjudged by said last mentioned Court
that said Thompson Mercer Benjamin

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Finnemans and John F. Smith have
return of the property replevined, and that the
writ of Return Habendo issue thereon, and that
they recover of said John W. Humphrey Two
Hundred Dollars damages and their costs
of defense, as by the record and proceedings
thereof now remaining in the Office of the
Clerk of said last mentioned Court more
fully appears, and the said Plaintiff in fact
saith said John W. Humphrey did not
prosecute his said suit to effect and with-
out delay, and save and keep harmless
him said Plaintiff so being Sheriff, as
aforesaid in replevying said property
according to the form and effect of said
writing obligatory and of the conditions thereof, but on the contrary thereof he said
Plaintiff in replevying said property in
pursuance of said Writ of Replevin
became liable to pay and was compelled
to pay said Thompson Kerr, Benjamin
Finneman and John F. Smith a large
sum of money, to wit the sum of Twenty
five Hundred Dollars, whereof said
Defendants then and there to wit, on the
day and year last aforesaid, at the County
of Stephenson aforesaid had notice. Whereby
said writing obligatory became forfeited to
said Plaintiff. By means whereof and by

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7 force of the Statute in such case made and provided an action hath accrued to said Plaintiff to have and demand of and from the said Defendants the said sum of twenty five hundred dollars parcel of the said sum above demanded.

2 And Whereas also said Defendants afterwards, to wit: on the said fourth day of May A.D. 1860. at said County of Stephenson by their certain other Bond sealed with their seals respectively and now shown to the Court here, the date whereof is, to wit: the day and year last aforesaid, did acknowledge themselves, the said John H. Humphrey as principal, and said Silas D. Clark and Lucius Sloodes as security held and firmly bound unto said plaintiff Sheriff of Stephenson County, in the penal sum of twenty five hundred dollars lawful money of the United States, and for the payment thereof did thereby jointly, severally, and firmly bind themselves, their heirs, executors, administrators and assigns, which said Bond was and is subject to a certain condition thereunder written, whereby after reciting to the following effect, to wit: that whereas on the said third day of May A.D. 1860. the said John H.

Humphrey sued out of the Clerks Office of the Circuit Court of Stephenson County, a Writ of Replevin against Thompson Menzies, Benjamin Zimmerman and John F. Smith, to replevy the following described goods and Chattels which the said John W. Humphrey alleges have been wrongfully taken and detained from him. said John W. Humphrey by said Thompson Menzies, Benjamin Zimmerman and John F. Smith, to wit. Forty one plain Black Bedsteads, Thirteen Spindle bedsteads, Seven Cherry bedsteads, Two Mahogany Bedsteads, Forty Eight White wood wash Stands, Twenty Eight Mirrors. ~~Two~~ Two Hundred and thirty two Cane seat Chairs Thirty three common Tables, Two work Stands. Fifteen Bureaus with Mirrors, seven round tables, Nineteen Cane seat Rocking Chairs, Seven Lounges. Three Sofas. Three center Tables. Sixteen Mahogany Spring Chairs, Two Marble top Center tables, Seven Marquette Arm Chairs one Easy Chair, Ten Marquette Easy Chairs Two Marquette Tete a tetes, Thirteen dining room tables, Four red plush settees, two green plush settees, one long Gilt Mirror, six vases, two reading room tables, one writing desk, and one center desk, all of the value as it is alleged of One thousand dollars, it was conditioned

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that said writ of Replevin having been
sued out of said Clerks office at the suit of
said John W Humphrey against said
Thompson Heesee, Benjamin Zimmerman &
Charles F. Smith, returnable at the (then)
next term of the Stephenson County Circuit
Court, to be holden at Freeport in said
County on the first Monday in the month
of September next thereafter, if said John W.
Humphrey should prosecute his suit to
effect and without delay, and make return
of the property replevined, if return thereof
should be awarded by said Circuit Court
of Stephenson, and save and keep harmless
the said Sheriff in replevying such property,
then said obligation should be void,
otherwise to remain in full force and
effect and that afterwards to wit on the
day and year aforesaid at the County
of Stephenson aforesaid, said Plaintiff as
being such Sheriff as aforesaid, duly
executed said writ of Replevin in said
bond mentioned, and then and there under
and by virtue of said writ, caused said
goods and Chattels in said Bond mentioned,
to be replevined and delivered to said John
W Humphrey under and by virtue of said
writ of Replevin, which said goods and
Chattels so replevined, the said Plaintiff

avens were then and there of great value, to wit, of the value of twenty five hundred dollars, and such proceedings were thereupon had in the matter of said suit in Replevin in said Bond mentioned, in said Circuit Court of Stephenson County, that afterwards to wit, on the fifth day of May A.D. 1860, said Thompson Reese and Benjamin Timmerman filed their petition for the removal of said suit of replevin, from said Stephenson County Circuit Court, into the Circuit Court of the United States for the Northern District of Illinois. And afterwards to wit, on the 7th day of May A.D. 1860, at the May Term A.D. 1860 of said Circuit Court of the United States, filed in said Court with the Clerk thereof, a transcript of the record of said suit of replevin and of the proceedings therein in said Circuit Court of Stephenson County, Whereupon said Circuit Court of the United States then and there took and became vested with the jurisdiction of said suit in replevin, and thereupon such proceedings were had in said suit of replevin in said last mentioned Court, that afterwards, to wit, At the October Term of said last mentioned Court A.D. 1860, the issues therein were tried by a jury and a verdict returned by said jury to the Court

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finding the issues for said Defendants Hersee, Zimmerman & Smith, Whereupon said last mentioned Court rendered judgment in said suit of replevin in favor of said Thompson Hersee, Benjamin Zimmerman and John F. Smith, that they have return of the property replevined and recover of said John H. Humphrey the sum of Two Hundred dollars their damages and their costs about their defense expended amounting to the sum of fifty five dollars and ninety five cents, as by the record of said Circuit Court of the United States and of the proceedings therein in said suit of Replevin will more fully appear. And said Plaintiff further avers that said John H Humphrey did not prosecute his said suit to effect and save and keep harmless him said Plaintiff in replevying said goods and chattels, but on the contrary thereof judgment was rendered against said John H. Humphrey in said Replevin suit as above stated, and thereupon afterwards, to wit: on the thirteenth day of December A.D. 1860. said Thompson Hersee and Benjamin Zimmerman brought suit against him said Plaintiff in the United States Court of the Northern District of Illinois, for the alleged insufficiency and informality of said Bond taken by him said Plaintiff as

such Sheriff as aforesaid. and such proceedings were thereupon had in said last mentioned Court, in said last mentioned suit, that at the December Term A.D. 1861 of said last mentioned Court it was considered and adjudged by said last mentioned Court that the Plaintiffs in said last mentioned suit have and recover from the defendant therein (that is him the said Plaintiff herein) the sum of Eighteen hundred and fifty dollars damages and their costs and charges therein amounting to the sum of Ninety one dollars and ninety one cents, whereof said Defendants then and there had notice, which said judgement said Plaintiff has satisfied and paid. Yet said Defendant John H. Humphrey although often requested so to do has not paid him said Plaintiff the amount of said judgment or any part thereof. And said Plaintiff avers that in the satisfying and paying of said judgment, and in defending said suit, he said Plaintiff laid out and expended a large sum of money, to wit: the sum of twenty five hundred dollars aforesaid. Yet to pay the same or any part thereof to him said Plaintiff said John H. Humphrey has hitherto neglected and refused and still neglect and refuse

7 13 although often requested so to do. By means
whereof said Bond became forfeited to
said Plaintiff, and an action hath accrued
to said Plaintiff to have and demand of
said Defendants said sum of twenty five
hundred dollars parcel of the sum above
demanded

And whereas also said defendants
heretofore to wit. on said fourth day of May
A.D. 1860. at said County of Stephenson
made their certain other Bond sealed with
their seals and now shown to the Court
here, the date whereof is a certain day and
year therein mentioned, to wit. the day and
year last aforesaid, & dig thereby acknowledge
themselves the said John H. Humphrey as
principal and said Silas D. Clark and
Lucius S. Combs as security, held and
firmly bound unto said Plaintiff
Sheriff of Stephenson County in the
penal sum of twenty five hundred
dollars lawful money of the United
States, and for the payment did thereby
jointly, severally, and firmly bind them
selves, their heirs, executors, administrators
and assigns, which said Bond was and
is subject to a certain condition thereunder
written, whereby after reciting, that whereas
said John H. Humphrey had sued out a

the Clerks Office of the Circuit Court of Stephenson County, a writ of Replevin against Thompson Hessie, Benjamin Zimmerman, and John F. Smith, to replevy certain goods and chattels in said Bond mentioned, described in the first count of this declaration, and alleged to be of the value of one thousand dollars, it was conditioned that if said John H. Humphrey should prosecute his suit to effect and without delay, and make return of the property replevined, if return thereof should be awarded by said Circuit Court of Stephenson, and save and keep harmless the said Sheriff in replevying such property, then said obligation to be void, otherwise to remain in force and effect, and that afterwards, to wit: on the day and year last aforesaid, at the County of Stephenson aforesaid, said Plaintiff so being said Sheriff duly executed said writ of Replevin in said Bond mentioned, and then and there under and by virtue thereof caused said goods and chattels in said Bond mentioned to be replevied and delivered to said John H. Humphrey, which said goods and chattels so replevied said Plaintiff avers were and are of great value, to wit: of the value of twenty five hundred dollars, and

Whereupon such proceedings were afterwards had in the matter of said suit of Replevin, that the Circuit Court of the United States of the Northern District of Illinois became during the May Term thereof A.D. 1865 vested with the jurisdiction of said suit, and such further proceedings were had in said suit in said last mentioned ~~Court~~ Court, that by the consideration and judgment thereof at the October Term of the same, a judgment was rendered therein against said John W. Humphrey and return of said goods and chattels, replevined awarded to said Thompson Hersee & Benjamin Zimmerman and John F. Smith, as by the record of said proceedings in the office of the Clerk of said last mentioned Court will appear. And said Plaintiff further avers that in replevying said property he said Plaintiff became liable, and was, by the consideration of said Circuit Court of the United States, at the December Term thereof A.D. 1865, adjudged to pay said Thompson Hersee & Benjamin Zimmerman a large sum of money to wit: the sum of Eighteen Hundred and fifty dollars their damages by reason of said replevy and said Plaintiff accepting said Bond, and to pay

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the costs and charges of said Thompson Hersee and Benjamin Timmerman in said last mentioned suit against him said Plaintiff, amounting to the sum of Ninety one Dollars and ninety five Cents, as will by the record of said last mentioned ~~suit~~ Court more fully appear. And that in and about the defence of said last mentioned suit and in the satisfying and ~~paying~~ payment of said judgment he said Plaintiff expended and was compelled to pay a large sum of money to wit: the sum of twenty five hundred dollars, whereof said John H. Humphrey then and there to wit: at said December Term A.D. 1861 of said last mentioned Court and at said County of Stephenson had notice, yet to pay the same or any part thereof to him said Plaintiff, or to save and keep harmless him, said Plaintiff Sheriff of Stephenson County from said liability and judgment and in replevying said property, said John H. Humphrey has neglected and refused hitherto and still neglects and refuses so to do although often requested, whereby said Bond became forfeited to said Plaintiff and by reason thereof and by force of the Statute in such case made and

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provided, an action hath accrued to said Plaintiff to demand and have of and from the said defendants the said sum of twenty five hundred dollars residue of the said sum above demanded.
Yet the said Defendants although often requested so to do have not as yet paid the said sum of twenty five hundred dollars above demanded, or any part thereof, to the said Plaintiff, but have hitherto neglected and refused so to do and still do neglect and refuse to pay the said sum or any part thereof to the said Plaintiff.
To the damage of said Plaintiff of twenty five hundred dollars, and therefore he brings suit &c.

Burchard & Barton
Plaintiffs Attys.

Copy of Instrument sued on.

Know all men by these presents, that we John H. Humphrey as principal, and Silas D. Clark and Lucius S. Comles as security are held and firmly bound unto Charles G. Taggart, Sheriff of Stephenson County in the penal sum of Twenty five

Hundred Dollars lawful money of the United States, for the payment we ~~bind~~ jointly, severally and firmly bind ourselves, our heirs, executors, administrators and assigns by these presents, Sealed with our seals and dated this fourth day of May A.D. 1860

The condition of the above obligation is such that Whereas, John H. Humphrey has this day sued out of the Clerks office of the Circuit Court of Stephenson County a Writ of Replevin against Thompson Hersee, Benjamin Zimmerman, and John F. Smith, replevy the following described goods and chattels which the said ~~goods and~~ John H. Humphrey alleges have been wrongfully taken and detained from him by the said Thompson Hersee, Benjamin Zimmerman, and John F. Smith, to wit: Forty one Plain Black Bedsteads, Thirteen Spindle Bedsteads, Seven Cherry Bedsteads, Two Mahogany Bedsteads, Forty Eight whitewood washstands, Twenty Eight Mirrors, Two hundred and thirty two cane seat chairs, Thirty three common Tables, Two Work stands, Fifteen Bureaus with Mirrors, Seven round tables, Nineteen cane seat rocking Chairs, Seven Lounges, Three Sofas,

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Three Centre Tables. Sixteen Mahogany Spring Chairs. Two Marble Top Wash Stands. Two marble top centre tables. Seven Marquett Arm Chairs, One Easy Chair. Ten Marquett easy Chairs. Two Marquette Tete a tete. Thirteen Dining-room tables. Four Red plush settees. Two Green plush settees. One Long Gilt Mirror. Six vases. Two Reading Room Tables. One writing Desk, and one center Desk. all of the value as it is alleged of One Thousand Dollars, now if and the said Writ of Replevin having been issued out of said Clerks office at the suit of John W. Humphrey against the said Thompson Hersee. Benjamin Zimmerman, and John F. Smith; returnable at the next term of the Stephenson County Circuit Court to be holden at Freeport in said County on the first Monday in the month of September next. Now if the said John W. Humphrey shall prosecute his suit to effect and without delay, and make return of the property replevined if return thereof shall be awarded by said Circuit Court of Stephenson, and save and keep harmless the said Sheriff in replevying such property, then this obligation to be void, otherwise to remain in full force and effect.

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Signed, sealed and delivered in presence of Thos. J. Turner.

J. M. Humphrey (Seal)
L. S. Loomis (Seal)
E. D. Clark (Seal)

Filed Nov 27. 1863
E. P. Hodges Clerk.

Amended 1st Count of Dec
Filed Dec 12th 1863

And afterwards, to wit: On the 12th day of December A.D. 1863. it being one of the regular days of said December Term of said Court, the following Entry was made as appears of Court Record. Vizt:

Charles F. Taggart. Shff
vs
John W. Humphrey. et als

Debt

L. 122.

Now on this day come the Defendants by Turner & Ingalls their Attorneys and file their demurrer to the first Count in the Declaration. And the demurrer coming on to be heard. It is ordered by the Court that it be sustained. And on motion of Plaintiff by Burchard & Barton his attorneys. leave is given him to amend said first Count in Declaration.

(The demurrer is but a mile & the amendment is not copied here E. P. H.)

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And afterwards, to wit on the 14th day of December A.D. 1863. it being as yet one of the days of said Court. the following entry was made in said cause.

Charles F. Faggart.
Sheriff of Stephenson Co.
vs
John W. Humphrey. et. al.

Debt.

L. 122.

Now on this day come the Defendants by Turner their Attorney and file their Pleas herein.

Copy of Plea

In the Stephenson County Circuit Court.
Of the December Term A.D. 1863.
John W. Humphrey. Lucius S. Cowles
and Silas D. Clark
vs
Charles F. Faggart. Sheriff of Stephenson Co.

And the said Defendants as to the said first Count in Plaintiffs said Declaration by Thomas J. Turner their Attorney come and defend the wrong and injury when &c, and say that the said supposed bond or writing mentioned in the said first count of said Plaintiffs Declaration is not their deed, and of this they put themselves upon the Country &c.

Thos J. Turner
Atty for Defts.

2 And the said Defendants as to the second and third pleas of the said Plaintiff said declaration, actio non because they say that no return of the property replevined as mentioned in said declaration was ever awarded by the Circuit Court of Stephenson County, and this the said Defendants are ready to verify, wherefore they pray judgment &c.

3 And the said Defendants Lucius S. Cowles and Silas D. Blank two of the defendants in the aforesaid suit come and defend the wrong and injury when &c and say that the said Plaintiff for anything contained in the second and third counts of said declaration ought not to have and recover of these defendants because they say that they and each of them executed the said supposed bond or writing obligatory as securities only of the said John H. Humphrey, of which the said Plaintiff at the time of the execution of said bond had notice and that as such securities these defendants covenanted and agreed that the said John H. Humphrey should prosecute his said suit to effect and without delay. save and keep harmless the said Plaintiff in replevying the goods and make return of the property if return thereof should be awarded by the Circuit

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Court of Stephenson County. And these Defendants aver that return of said goods was not awarded by the Circuit Court of Stephenson County, and this they the said Defendants Lucius S. Cowles and Silas D. Clark are ready to verify, wherefore they pray judgment &c-

4 And the said Defendants Lucius S. Cowles and Silas D. Clark for a further plea to the said Plaintiffs said Declaration says actio non because they say that the said Plaintiff did not pay lay out and expend the said sum of twenty five hundred dollars or any other sum of money by reason of any forfeiture of said Bond or writing obligatory but whatever money he was compelled to pay said Hersey and Zimmerman was in consequence of his the said Plaintiff not taking a sufficient Bond from the said John W. Humphrey before replevying the goods and chattels aforesaid and this the said Defendants Lucius S. Cowles and Silas D. Clark are ready to verify, ~~wherefore~~ whereupon they pray judgment &c.

5 And for a further plea in this behalf the said several defendants say actio non because they say that they the said Defendants did save and keep harmless the said

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Plaintiff in replevying the goods and chattels mentioned in said Declaration, and did make return of the goods and chattels mentioned in said Declaration to the said Hesser & Timmerman, and of this they the said defendants put themselves upon the country &c.

Thos J. Turner
Atty for Defts

Filed Dec 14. 1863.
C. P. Hodges. Clerk

And afterwards, to wit: on said 14th day of December A.D. 1863. as yet of said Term, said Court the following Entry was made in said Cause.

Charles F. Taggart. Shff &c
vs
John H. Humphrey. et.al.
Debt.

L. 122.

Now on this day comes the Plaintiff by his Attorneys and files his Replication to the first plea herein and Demurrer to the 2d & 4th pleas.

Copy of Rep & Dem.

In the Stephenson County Circuit Court
December Term A.D. 1863.

Charles F. Taggart Sheriff
Stephenson County
vs
John W. Humphrey et al

And said Plaintiff as to said Defendants first plea herein wherein the said Defendants have put themselves upon the country. the Plaintiff doth the like.

And as to said Defendants 2nd 3rd and 4th Pleas filed herein said Plaintiff says that said Pleas and each of them and the matter therein contained as the same are therein pleaded are not sufficient nor is either of said pleas sufficient to bar him said Plaintiff from having and maintaining his aforesaid action thereof wherefore he prays judgment &c.

And for special cause of Demurrer to each of said pleas said Plaintiff shows that each of said pleas sets out no new matter, and should conclude to the country

2nd Said pleas respectively, do not answer the count they profess to answer, and if true would not bar Plaintiff action

3rd Said pleas and each of them amount to the general issue

4th Said pleas and each of them are in other

respects informal and insufficient

Burchard & Barton
Plaintiffs Attys

Filed Dec 14. 1863
E. P. Hodges, Clk

And afterwards, to wit: On the 21st day of December A.D. 1863. it being as yet one of the days of said term of said court, the following Entry was made in said cause

Charles F. Taggart Shff
vs
John W. Humphrey, et.al
Deft

L. 122

And now comes on to be heard the demurrer to the 2nd 3rd 4th & 5th Pleas And the Court being fully advised in the premises. it is ordered that the demurrer be sustained

And afterwards, to wit: On Wednesday the 30th day of December A.D. 1863. it being as yet one of the regular days of said December Term of said Court. the following Entry was made in said cause

Charles F. Taggart Sheriff
of Stephenson County
vs
John W. Humphrey
Debt

L 122

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Lucius S. Cowles v
Silas D. Clark

Now on this day come the said parties by their Attorneys, and upon the issues joined for trial waive the intervention of a jury and put themselves upon the Court. And after hearing the evidence adduced and arguments of Counsel, the Court being fully advised in the premises, finds the issues for the Plaintiff, and assesses the Debt at Twenty five Hundred Dollars, and the Damages at Six Hundred and twenty nine dollars and fifty cents. Thereupon it is further considered and ordered that said Plaintiff have and recover of said Defendants the said sum of Twenty five hundred dollars his debt and the further sum of Six Hundred twenty nine & 50/100 Dollars, for his damages, so as aforesaid by the Court assessed, together with his costs and charges by him about this suit in his behalf expended, and that he have Execution for the same. It is further ordered that the debt be discharged upon the payment of the damages and costs assessed herein. Thereupon said Defendants by their Attorneys enter their motions for a new trial and in arrest of judgment. And the motions coming on for hearing it is

ordered that they be overruled, to which ruling said Defendants by their Attorney excepts.
And now the said Defendants pray an appeal herein, and it is ordered by the Court that an appeal be allowed upon condition that they file their appeal bond properly conditioned to said Plaintiff with the Clerk of this court within sixty days, with James B. Childs as surety in the penal sum of one thousand dollars.

And afterwards, to wit: on the 22d day of February 1864. said Defendants Attorney Thos. J. Turner Esq. filed the following Praecipe for Transcript

"Charles L. Taggart
vs
John W. Humphrey,
Lucius S. Combs &
Silas D. Clark

Judgment in the Circuit Court of Stephenson County.

The Clerk will please furnish the Defendants a Transcript of the Declaration, Pleas, Demurrers, Replications and all the orders of Court recorded in the above Entitled cause.

Thos J. Turner
Atty for Defts.

Filed Feby. 22d. 1864
C. L. Rodgers Clk

State of Illinois }
Stephenson County } ss.

I Edward P. Hodges Clerk of the Circuit Court in and for said County, Do hereby certify that the above and foregoing is a true, full, and complete copy of the Declaration, Pleas, Demurrer, and Replications, and also of all the orders made and entered in the above entitled cause, as appears from the Court Records and papers on file in my office. (Except copy of Demurrer to 1st Count in Declaration which I am unable to find)

In Testimony whereof I have hereunto set my hand and affixed the seal of our said Court at Freeport in said County, this 4th day of March A. D. 1864.

E. P. Hodges. Clerk



Assignment of Errors.

In the Supreme Court of Illinois
Of the April Term A.D. 1864
Third Grand Division

John W. Humphrey, Lucius S.
Cowles and Silas D. Clark,
Plaintiffs in Error

vs

Charles D. Daggett, Sheriff of Stephenson Co.
Defendant in Error

And now come the said Plaintiffs in Error by Thomas J. Turner their attorney, and say that in the record and proceedings aforesaid there is manifest Error, in this to wit

1. The Circuit Court erred in sustaining the demurrer to the second third fourth and fifth pleas of the defendants below, and each of them there having been no demurrer to said fifth plea
2. The Court erred in overruling the motions for a new trial, and in arrest of judgment and each of them.
4. The court erred in rendering the judgment aforesaid in manner & form aforesaid

T. J. Turner for Plffs in Error

Chicago April 1. 1864

Let the writ of error to be issued herein be made a supersedeas upon the said plaintiff in error giving bond in the usual form in the penal of sum of One thousand dollars with William A Wright as surety conditioned according to law

C B Mc Kinstle
Asst Justice of Sup Court

John W Armstrong et al
vs
Charles F Sargeant

Record & Errors

Filed April 15, 1864
L. Lillard
Clerk

Writ for Citation & Ret'd
Issued & Served