

13286

No. _____

Supreme Court of Illinois

Davis

vs.

Randall

71641  7

STATE OF ILLINOIS,
SUPREME COURT,
^{no 5}
Third Grand Division.

No. 122.

James
vs
Randall

13286

In the Supreme Court of Illinois.

APRIL TERM, 1861.

ICHABOD DAVIS
against
WILLIAM RANDALL & CO. }

Error to Winnebago Circuit Court.

The record from the Court below sets out a petition of Ichabod Davis, the defendant below, upon which a writ of certiorari was issued by order of the Master in Chancery, to remove a judgment from a Justice Court, in favor of William Randall & Co., against Davis.

The petition was sworn to, and states as follows:

- 1 "The petition of Ichabod Davis, of the County of Winnebago, respectfully represents, that on the second day of July, of the present year, a summons was issued against him by Price B. Webster, Esq., a Justice of the Peace, of Howard, in the County of Winnebago, at the suit of William Randall & Co., returnable the ninth day of July 1859, at one o'clock in the afternoon; and that the said summons was served upon this petitioner; that at 2 o'clock in the said return day, this petitioner appeared at the office of the said Justice, according to the requirement of the said summons, and requested him to call the said cause; and that the said Justice, although not then engaged in any other trial, took no notice of the said request; that this petitioner then went out to obtain a witness, returned to the office in about half an hour afterwards, and there found the said William Randall and his partner, William T. Crouch, and the said Justice, footing up figures which appeared to be the account of the said plaintiffs against this petitioner; that this petitioner thereupon remonstrated against the said proceeding, and reminded the said plaintiffs of one item of account of ten dollars which he had against them, and of another item or aggregate of items of eight dollars; and that they directed the item of ten dollars to be allowed, and according to the best of this petitioner's recollection, the eight dollars also.

And this petitioner further represents, that after some more altercation, the said William Randall offered that if this petitioner would promise to come and settle with the said plaintiffs in twenty days, they would withdraw the said suit and pay the costs thereof; that this petitioner thereupon stated to the said Randall that he, this petitioner, was going to Iowa, and did not know as he should get back within the twenty days, and stated that he would call and settle as soon as he returned and could find his pass book, containing his account against the said plaintiffs, the said book being then mislaid; and that the said Randall, as this petitioner understood, then directed the said suit to be discontinued, and this petitioner left the said office, supposing the said suit had been discontinued; and that this petitioner did not know, nor had any intimation to the contrary, or that a judgment had been rendered against him in the said cause, until on or about the fifteenth day of August last past, when a constable stated to him that he had an execution upon a judgment in the said cause—which time was more than twenty days from the date of the said judgment; so that this petitioner never had an opportunity to take an appeal from the said judgment in the ordinary way.

And this petitioner further represents, that a certified copy of the entry of the said judgment is hereunto annexed; and that in his opinion the said judgment is unjust and erroneous; and that the said injustice and error consists in this, that he, this petitioner, had no opportunity to present his defence to the said action, as is herein before shown, and that the said judgment was rendered for twenty-three dollars or over, more than this petitioner was indebted to the said plaintiffs.

This petitioner therefore prays, &c.

(Signed) ICHABOD DAVIS.

6 A writ of certiorari was issued upon this petition on 7th January, 1860.

11 On the 14th February, 1860, the plaintiffs below filed a motion to dismiss the certiorari, assign-
21 ing as reasons that the petition is insufficient, indefinite and uncertain, and the defendant does not show facts to bring himself within the law as entitled to the writ; and that he will show by affidavit its untruthfulness.

18—19 The motion to dismiss the certiorari was taken up on the 5th October, 1859.

The petition having been read as it appears on the files in the cause, the appellees plaintiffs offered, in order to disprove facts alleged in the petition, two affidavits of William Randall, plaintiff, and two affidavits of the Justice, Price B. Webster.

The first affidavit of William Randall is dated 29th February, 1860, was filed 2d March, 1860. It states that at the trial before the Justice, on the 9th July, 1859, Davis was present, and then knew the judgment rendered against him for the amount the same rendered; and after the same was so rendered against him promised this affiant to fix the same with him in a short time, stating that he was going to Iowa for a few days, and on his return he would fix it, the judgment, up with this affiant; that shortly after he went away for a few days, but shortly returned, and on his return failed to pay the judgment as he had agreed to do, and affiant caused execution to issue.

23 The second affidavit of Randall was dated 28th June, 1860, and was filed the same day. It states that Ichabod Davis was present at the trial before the Justice, and was at the time of the trial notified to put in his defence, if he had any; that Davis said he had no defence to put in before a one-horse court; that after the trial the court informed him of the judgment against him; that thereupon the said Davis remarked, you may go to hell with your judgment.

24 The first affidavit of Webster is dated 29th February, 1860, and was filed 2d March, 1860. It states that Davis was present at the trial before Webster, and then knew of the rendition of the judgment against him, and made no objection to its rendition; that on the trial it was proven to the satisfaction of the court, that Davis was indebted to the plaintiff in amount of the judgment.

25 The second affidavit of Webster is dated 28th June, 1860, and was filed the same day. It states that Ichabod Davis was present at the time of the trial, and was notified by the affiant to produce his defence, if any he had; that he then told this affiant, who was then acting as court in said cause, that he had no defence to put in before a one-horse court; that after hearing the cause, he informed Davis what the amount of the judgment rendered against him was; and Davis then said, you may go to hell with the judgment.

The defendant's counsel objected to the introduction of the affidavits, on the ground that the facts stated in the petition were to be taken as true, and the truth thereof could not be tried by affidavit. They also stated that they had affidavits to introduce, if affidavits were admitted, as follows:

They produced the affidavits of John R. Herring, Allen Rice and Michael Clarke.

The affidavits of Herring and Rice are dated 2d March, 1860, and were filed 5th Oct., 1860.

The affidavit of John R. Herring and Allen Rice states that on 9th July, 1859, each deponent was present at the office of Price B. Webster; that while there an altercation took place between William Randall and Ichabod Davis, about the suit then pending between them; that Davis denied the truth of the amount attempted to be sustained against him, and claimed that he was not indebted to the amount which Randall claimed; he also alleged that he had mislaid his pass-book in which the account of their dealings was kept, and could not find the same; that Davis did make objection to the rendition of any judgment against him: that Randall then and there offered to Davis, that if he would in twenty days, or immediately after his return from Iowa, bring his accounts and settle with him, he, said Randall, would allow him all credits, and make all deductions from his said Randall's claim which was just and right.

27 Rice further says, that Randall then and there said to Davis, and to the Justice, Price B. Webster, that he would let the case drop, or stand just as or where it was. Said Randall had previous to said agreement about a future settlement in twenty days, or after Davis returned from Iowa, made oath that he feared that he would lose his debt unless an execution was issued forthwith; but affiant believes that no judgment had been recorded at the time said Randall made said last mentioned oath. The affiant paid particular attention to the proceedings before the Justice.

The affidavit of Michael Clarke states, that on 9th July, 1859, he was present at the office of Webster, the Justice, when the cause was called for trial; that Davis objected to the trial at that time, because he had paid about \$18 of plaintiff's account for which he was not credited; that he had lost his account book, and therefore could not settle then, or try the case. Randall then offered, if Davis would come and settle with him in twenty days, he would dismiss the case. Davis said he was going to Iowa, and did not know as he would be back in twenty days, but promised as soon as he could get back, and get his account book, he would call and settle with plaintiffs. Thereupon he heard Randall say to the Justice, "Dismiss the cause, and

I will settle it at another time with him." I did not notice any witness sworn in the case. I heard Davis say to the Justice, if he rendered any judgment in the case he would appeal it. This was before Randall told the Justice to dismiss the cause.

The court, after hearing the arguments of counsel, refused to admit the affidavits, and upon inspecting the petition, expressed the opinion that the same was not sufficient to sustain the writ of certiorari, it appearing to the court that the defendant was negligent in not ascertaining that judgment had been rendered against him by the Justice of the Peace; that he was bound to know what judgment the Justice rendered.

Upon the court expressing this opinion, the defendant's counsel waived their objection to the introduction of the affidavits, and all the said affidavits were offered on the part of the defendant; but the court refused to consider the same, on the ground that affidavits in the case were admissible. The defendant excepts to this opinion, and the exception is allowed.

And thereupon the court sustains the motion to dismiss the writ of certiorari, and the defendant excepts, and his exception is allowed. And a bill of exceptions is signed and sealed.

19 The order dismissing the writ was then entered of record.

ASSIGNMENT OF ERRORS.

31 1. The petition is sufficient to sustain the writ of certiorari, and the Circuit Court erred in giving the opinion that the same was insufficient on the ground that Ichabod Davis was negligent in not ascertaining that the Justice had rendered judgment against him, and that he was bound to know what judgment the Justice rendered.

2. The Circuit Court erred in refusing to consider the affidavits, after Davis had waived his objections to the same, and had offered them to the court on his part.

3. The Circuit Court ought to have overruled the motion to dismiss the writ of certiorari, and not to have sustained it.

BURNAP & HARVEY, Attorneys for Plaintiff in Error.

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Supreme Court.

Isabod Davis

apt.

William Randell & Co.

Abstract.

Filed April 29, 1861
L. Leland
Clerk.

State of Illinois.
In the Supreme Court for the ~~North~~ Third Judicial
Division.

Of April Term 1861.

Isaacod Davis

app.

William Randall & Co.

In Error to Winnebago Circuit Court

It is hereby stipulated and agreed that the
above intitled cause shall be submitted upon
written briefs and arguments. Dated 13 April 1861.
Subject to any right, of the defendant in Error, to have the
cause dismissed from this Court if sufficient informality exists
therefor —

Burnap & Harvey, Attys for Plff in Error.

Harner & Brazee

Attys for Deft. in Error

Supreme Court,
122

Isabel Davis

att,

William Randell & Co.

Stipulations.

Filed April 17, 1887

L. Leland
clerk

Copies of abstract will
be sent. Bunnell & Noyes.

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Sheriff of the County of

Winnebago

Greeting:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Circuit Courts of Winnebago County, before the Judge thereof, between William Randall & Co.

plaintiff, and Isabod Davis

defendant....., it is said that manifest error hath intervened, to the injury of the said Defendant

_____ as we are informed by his complaints _____ the record and proceedings of which said judgments 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 William Randall & Co.

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

_____ notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 16th day of January in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Leland

Clerk of the Supreme Court.

J. B. Rice Deputy

Ischabod Davis

No.

vs.

William Randall

SCIRE FACIAS.

FILED

April 16 A. D. 1861

L. Leland

Clerk.

I have duly served the
within by reading to the
within named William
Randall February 12th
1861

Me. J. Upright Sheriff
By E. C. Harris Dep.

Service 50
Milage 1.25
Return 10

\$7.83

In the Supreme Court of the State of Illinois
for the third Grand Division.

A writ of error for Ichabod Davis, directed to the clerk of the Winnebago Circuit Court, to remove the record in a certain cause lately depending in the said Circuit Court, wherein William Randall ~~was~~ & Co. were plaintiffs and the said Ichabod Davis was defendant.

A writ of *scire facias* to hear errors, directed to the sheriff of Winnebago County, commanding him warn William Randall & Co. to appear on the first day of the next term, to hear error assigned on the part of Ichabod Davis.

Burnap & Harvey,
Attorneys for said Ichabod Davis.

Supreme Court
Isabod Davis
agt.
William Randall & Co.

Procipe.

Filed Jan. 16. 1861
L. Leland
Clerk

Burns & Harvey.

State of Illinois.
In the Supreme Court for the Third Judicial Division,
Of April Term 1861.

Isabou Davis

vs

William Randell & Co.

} In Error to Winnebago Circuit Court.

It is hereby stipulated and agreed that the above
intitled cause shall be submitted upon written
briefs and arguments, Dated 13 April 1861, Sub-
ject to any right of the defendant in error to have
the cause dismissed from this court if sufficient
informality exists therefor.

Barnes & Harvey, Attys. for Plff. in Error.
Hamer & Bouyer

Attys. for Deft in Error

²²
Isabell Davis

²
William Randall
— 4 — 4 —

Stipulation to
Sunt on Writter
Brief & Argument

Filed Apr 17, 1861
A. L. Leland
Clerk

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

To the Clerk of the Circuit — Court for the County of Winnebago 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 Winnebago County, before the Judge thereof, between William Randall & Co.

plaintiff, and Deborah Davis

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

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 14 day of January in the Year of Our Lord One Thousand Eight Hundred and Sixty one

L. Deland

Clerk of the Supreme Court.

G. J. B. Rice Deputy

Isabel Davis

No.

vs.

William Randall

WRIT OF ERROR.

FILED

January 16 A. D. 1861*L. L. Lane*

Clerk.

United States of America
State of Illinois Winnebago County ss. } Pleas before the Hon
Benjamin R. Sheldon Judge of the fourteenth Judicial Circuit
of the State of Illinois began and held at the Court House
in the City of Rockford in said County on the 6th day of
February A. D. 1860

Present Hon Benj R Sheldon Judge
W. D. Meacham States Attorney
King H Milliken Sheriff
Morris B. Derrick Clerk

Petition for Certiorari

In the Winnebago Circuit Court:
Winnebago County ss.

To the Honorable Benjamin R
Sheldon Judge of this Court:

The petition of Schaberd Davis of the County of
Winnebago respectfully represents that on the second day of
July of the present year, a summons was issued against him
by Price R. Webster Esq. a Justice of the Peace of Howard
in the County of Winnebago at the suit of William Randall
Esq. returnable the ninth day of July 1859 at One O'clock
in the afternoon, and that the said summons was served
upon this petitioner: That at two O'clock on the said return
day, this petitioner appeared at the Office of the said Justice
according to the requirement of the said summons, and request-
ed him to call the said Cause, and that the said
Justice, although not then engaged in any other trial, took

no notice of the said request. that this petitioner then went out to obtain a witness returned to the Office in about half an hour afterwards and then found the said William Randall and his partner William G. Crouch and the said justice footing up figures which appeared to be the account of the said Plaintiff against this petitioner: that this petitioner thereupon remonstrated against the said proceeding and reminded the said plaintiff of one item of account of ten dollars which he had against them, and of another item or aggregate of items of eight dollars, and that they directed the item of ten dollars to be allowed, and according to the best of this petitioner's recollection the eight dollars also:

And this petitioner further represents that after some more altercation the said William Randall offered that if this Petitioner would promise to come & settle with the said Plaintiff in twenty days, they would withdraw the said suit and pay the Costs thereof: that this petitioner thereupon stated to the said Randall that he this Petitioner was going to Iowa, and did not know as he should get back within the twenty days, and stated that he would call and settle as soon as he returned and could find his pass books, containing his account against the said Plaintiff, the said books being then mislaid, and that the said Randall as this petitioner understood them directed the said suit to be discontinued, and this petitioner left the said Office, supposing the said suit had been discontinued, and that this petitioner did not know nor had any intimation to the contrary or that a judgment had been rendered against him in the said.

Cause, until on or about the fifteenth day of August last past, when a Constable stated to him that he had an execution upon a judgment in the said Cause, which time was more than twenty days from the date of the said judgment so that this petitioner never had an opportunity to take an appeal from the said judgment in the ordinary way:

And this petitioner further represents that a certified copy of the entry of the said judgment is hereto annexed and that in his opinion the said judgment is unjust and erroneous, and that the said injustice and error consist in this that such petitioner had no opportunity to present his defence to the said Action as is hereinbefore shown, and that the said judgment was rendered for twenty three dollars or over, more than this petitioner was indebted to the said Plain-
tiff:

This petitioner therefore prays that a writ of Certiorari may be issued to remove the said Cause and the judgment therein rendered, into the said Circuit Court for the County of Winnebago according to the form of the Statute in such case made and provided:

Schabod Davis.

State of Illinois

Winnebago County, ss.

Schabod Davis, the above named petitioner, being duly sworn upon his oath says, that he has heard the foregoing petition read, and that the facts therein alleged are true:

Sworn at Rockford in the

County of Winnebago this 20th day of

December 1859 before me A. K. Sawyer Dep. Clerk

Schabod Davis.

To Mr B. Derrick. Clerk Cir Court

You may issue Certiorari in this Cause as prayed on filing this and a bond to be approved by you.

Dec 20 1859.

Yours E. H. Baker
Master in Chancery.

Masters fee \$1.00

In Justice Court before P. B. Webster Esq
State of Illinois
Winnebago County J.
William Randall & Co

On July 2. 1859. a sum
Schabod Davis mons issued in this cause
returnable the 9th inst at

\$58.04 One Clock Pm. on book account: The summons returned
Dec 12 personally on the defendant by A Camps Constable July the
I 19 6th 1859. fees 40^{cts}: July the 9th A.D. 185 at 2 O Clock Pm the
Suglwr 12 suit called by Price B. Webster Esq at his Office. the parties
Jury 25. present and answered to their names the Plaintiff declares
Exp 25 on a book account due to D. N. Smith & William B. Book
94 sworn to from the books: After hearing the proof and al
legations. it is considered by the Court said Court Price B.
A Camps 40 Webster Esq. that William Randall & Co have and recover
\$1.34 of the Defendant Schabod Davis the sum of fifty eight ⁰⁰/₁₀₀
dollars Damage and one ³⁴/₁₀₀ dollars costs of suit and that
1859 Aug 6. the plaintiff have execution for the same.

1859. August 6. Execution issued to E. E. Harris Constable.

5

31st day of August 1859. Execution returned no property found on the County to levy on & the defendant refuses to turn out property. E. E. Harris. Constable: fees 50.

August the 31. 1859. A ca sa issued on the oath of Wm. J. Crouch against the body of Ichabod Davis on the above judgment to E. E. Harris Const.

State of Illinois
Winnemago County I. Price Webster a Justice of the Peace in & for said County do certify that the within transcript is truly copied from the files & books of my Office In Witness Whereof I have hereunto set my hand this 10 day of December A.D. 1859.

Price B. Webster
Justice of the Peace.

Enclosed

"Filed May 7. 1860

Mr. D. Derrick Clerk

By Attest Mayor Dep. Clerk"

Appeal Bond:

Know all men by these presents. That we, Ichabod Davis, S. H. Scott and William H. Riley are held and firmly bound unto William Randall & Co. in the special sum of One hundred & twenty dollars, lawful money of the United States, for the payment of which well & truly to be made, we bind ourselves, our heirs and administrators, jointly

severally and jointly by their presents:

Witness our hands and seals this twentieth day of December A.D. 1859:

The Condition of the above obligation is such, that whereas the the said William Randall & Co did, on the ninth day of July A.D. 1859, before Price B. Webster Esq a Justice of the Peace for the County of Winnebago, recover a judgment against the above bounden Ichabod Davis for the sum of fifty eight dollars and four Cents and Costs of suit, from which judgment the said Davis is about, by writ of Certiorari, to take an appeal to the Circuit Court of the County of Winnebago aforesaid, & State of Illinois: Now if the said Ichabod Davis shall prosecute his said Appeal with effect, and shall pay whatever judgment may be rendered by the Court upon dismissal or trial of said Appeal, then the above obligation to be void; otherwise to remain in full force and effect.

In presence of
S. L. Kerrumman

Ichabod Davis {Seal}
S. W. Scott

Wm H. Riley {Seal}

Endorsed

"Taken, filed and approved by me this 7th day of January A.D. 1860"

Wm D. Derrick Clerk of Circuit Court
By A. Penney Dep."

Certiorari

State of Illinois

Winnebago County p.

~ The People of the State of Illinois

7
to Pnce B. Holsen Esq a Justice of the Peace of the County
of Hennepago: Greeting:

Whereas it has been made to appear by the Petition of Ichabod Davis filed our Circuit Court for the County of Hennepago. That in a Certain Cause lately depending before the said Pnce B. Holsen Justice as aforesaid wherein William Randall & Co were Plaintiffs and the said Ichabod Davis was defendant judgment was recovered by the said Plaintiff against the said defendant. That the said Judgment in his opinion is unjust & erroneous, for reasons set forth in the said Petition. That the said judgment was not the result of negligence in the said Petitioner & it was not in his power to take an appeal from the said judgment in the ordinary way, for the Causes set forth in the said Petition: And whereas the Master in Chancery for the said County of Hennepago has granted an order for the issuing a writ of Certiorari to remove the said Cause in which the said judgment was recovered from before the said Justice of the Peace into our said Circuit Court: Now therefore we Command the said Pnce B. Holsen Justice of the Peace as aforesaid to Certify to our said Circuit Court for the County of Hennepago a transcript of the judgment & other proceedings had before him in the said Cause & to stay all further proceedings in the said Cause until the further order of our said Circuit Court in the premises.

And we Command the Sheriff of said County to make Service of this writ upon the said Justice:

Witness Morris B. Derrick Clerk of our said
Circuit Court & the seal thereof at Rockford
this 7th January 1860:
L. S. 3

M B Derrick Clerk

By Attny Genl Dep Clerk

I have sent the transcript to the Clerk M. B. Derrick & the
 summons & the other papers are in L. J. Warner's hands.

P. B. Webster J.P.

Ordered

"Delivered this writ to Price B. Webster Esq Jan'y
 23rd 1860. Sheriff fees \$2.25

K. H. Milliken Sheriff

Transcript

In Justice Court before Price B. Webster Esq
 State of Illinois
 Hennepin County of.
 William Randall & Co

vs.
 Schabert Davis
 July the 2nd A.D. 1859. a summons
 issued in this cause returnable the
 9th inst at One O'clock P.M. on

Dams \$58.04

12 Book Account: The summons returned personally served
 19 on the Defendant by A. Camp Constable July the 6th 1859.
 20 fees 40^{cts}: July the 9th 1859. at 2 O'clock P.M. the said Called
 25 by Price B. Webster Esq at his Office. the parties present and
 25 Answered to their names. the Plaintiff declared for fifty eight
 6 4/100 dollars on book account and that D. H. Smith & Tom Cook
 sworn to serve the books. after hearing the proof and alle-
 40 gations it is considered by said Justice Court. Price B.
 \$1.34 Webster Esq that William Randall & Co have and recover

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of the Defendant Ichabod Davis the sum of fifty eight
 $\frac{4}{100}$ dollars damages and one Dollar $\frac{3}{4}$ $\frac{1}{100}$ Costs of suit and
 that the Plaintiff have execution for the same.

Price B. Webster

Justice of the Peace.

August the 6th 1859.

Execution issued on the above and given
 to E. E. Harris Constable.

30th day of August 1859. Execution Returned no
 property found on the County to Seize on, and the Defendant
 refuses to turn out property.

E. E. Harris Constable.

August the 31st 1859

A Ca. is issued on the oath of W. F.
 Crook against the body of Ichabod Davis on the above
 judgment & given to E. E. Harris Const.

State of Illinois.

Monmouth County p. 3 I, Price B. Webster a Justice of the
 Peace in & for said County do Certify that the foregoing transcript
 from the files and books of my office. In Witness whereof I
 have hereunto set my hand this 28th day of January A.D.
 1860

Price B. Webster

Justice of the Peace

for for Transcript, 25-

Ca Sa

State of Illinois

County of Monmouth p. 3 The People of the State of Illinois to.

any Constable of said County: Greeting: Whereas William Randall & Co lately recovered before the undersigned a Justice of the Peace of said County the sum of fifty eight $\frac{24}{100}$ dol-
lar debt and one $\frac{34}{100}$ dollars Cost against Ichabod Davis
as appears by the Docket of said Justice. And whereas an
execution issued upon said judgment against the goods &
chattels of the said Ichabod Davis has lately been returned
by E. E. Harris a Constable of said County no property found
and whereas Wm. J. Crouch has this day made before the un-
dersigned that he verily believes that the said Ichabod
Davis is able to pay the said judgment and withholds the
money:

Now therefore you are hereby Commanded to take the
body of the said Ichabod Davis if he shall be found in
your County and Carry him to the Common Jail of said
County there to remain till he shall pay and satisfy the
said Wm. Randall & Co the judgment aforesaid and do you
make return hereof as the law directs;

Given under my hand and seal this 31st
day of August A.D. 1859.

Oliver B. Webster

Justice of the Peace (S. S.)

Enclosed

"Ca Sa Wm Randall & Co v Ichabod Davis
Debt \$58 $\frac{24}{100}$ Cost 1.34 For Ex 50. Ca Sa 37. \$60.25

I have executed the within by arresting the
within named Ichabod Davis and have delivered him

up to the Sheriff: September 1st 1859.

E. E. Harris Cont.

Service so. Mileage 1.00 Travel & assistance 8.00
\$9.00.

Received the within named defendant to jail
on the 1st day of Sep. 1859, and he was discharged by
appealing & giving bond to the Circuit Court of Winnebago
County on the 7th day of January A.D. 1860.

Board & jail fees \$61.75. Paid by said
Randall & Co.

King H. Milliken Sheriff & Jailor
of said Winnebago Co.

Motion to dismiss cont.

William Randall et al

by
Schabro Davis

Winnebago County Circuit
Court July Term 1860

The Plaintiff herein moves
the Court that the Certiorari in this Cause be dismissed
and assigns as reasons that there was no bond given: That
the Petition in this Cause is insufficient indefinite and un-
certain: And that the said Defendant does not show facts
to bring himself within the law as entitled to said writ
& that he will show by affidavit its untruthfulness.

L. J. Warner Atty for Plff

Endorsed

Filed July 14/60 M & Derrick Clerk

Affidavit of Mr. Randall

State of Illinois
 Winnebago County, *ss* William Randall being by me
 first duly sworn deposes & says that he is one of the plain-
 tiffs in the suit tried before J. B. McArthur on the 9th day
 of July A.D. 1859, wherein William Randall & Co were
 plaintiffs and Schabro Davis was defendant now pending
 in the Winnebago County Circuit Court, that on the said
 trial before J. B. McArthur, the said Davis was present
 and then knew the judgment rendered against him for the
 amount the same rendered:

And after the same was so rendered against him
 promised this affiant to fix the same with him in a short
 time: then stating that he was going to Iowa for a few days
 and on his return he would fix it the judgment up with
 this affiant that shortly after the judgment was rendered
 against him he went away for a few days but shortly re-
 turned to said Winnebago County, and on his return failed
 to pay the same as he had agreed to do, and that he
 caused execution to issue upon the said judgment, but no
 money was made:

Subscribed & sworn to
 before me this 29th day
 of July A.D. 1860

L. V. Cleveland
 Justice of Peace
 Endorsed

ss Mr. Randall

Filed Mch 7/60

Mr. Derricks Atty

Affidavit of Wm Randall

State of Illinois
 Monmouth County ss. William Randall being by me
 first duly sworn deposes and says that he was present be-
 fore Price B. Helster a Justice of the Peace in said County
 at a trial wherein William Randall & Co were plaintiffs
 and Ichabod Davis was defendant (and that Ichabod
 Davis was present and was at the time of the trial notified
 to put in his defence thereto if he had any that said Davis
 said that he had no defence to put in before a one horse court
 That after the trial the Court informed him of the judgment
 rendered against him. That thereupon said Davis remarked
 you may go to hell with your judgment.

Subscribed & sworn to
 before me this 28th day of June Wm Randall.
 1860 M. B. Derrick Clerk

Enclosed

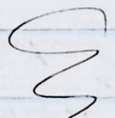
"Filed June 28. 1860

M. B. Derrick Clerk"

Affidavit of Price B. Helster.

State of Illinois
 Monmouth County ss. Price B. Helster being by me
 first duly sworn deposes and says that he is the Justice
 of the Peace before whom William Randall & Co recovered
 a judgment against one Ichabod Davis on the 9th
 day of July A. D. 1859. for the sum of Fifty Eight dollars

and four Cents besides Costs, And which has been taken by writ of Certiorari to the Circuit Court of Hanniburg County, and that affiant further says that on the day of the trial and of the rendition of the judgment against said Davis. The said Davis was present at the trial of said Cause and then knew of the rendition of the judgment in said Cause against him and made no objection to the rendition of said judgment against him - that on said trial it was proven to the satisfaction of the Court that the said Davis was indebted to the Plaintiff in amount of the judgment rendered against him:

Subscribed & sworn to
Before me this 29th day of
July 1860.  Price B. Webster:
S. W. Cleveland
Justice of Peace (Seal) 

Endorsed

"Filed March 7th 1860

Mr. F. L. Derrick Clerk

Affidavit of Price B. Webster:

State of Illinois

Hanniburg County, Mo. Price B. Webster being by me first duly sworn deposes and says that he is the justice of the Peace who tried the Cause wherein William Randall Hoo was Plaintiff and Ichabod Davis was defendant.

which Cause has since been taken to the Circuit Court of Winnebago County by writ of Certiorari and which suit was the only Cause between the same parties ever tried before this affiant: That the said Ichabod Davis was present at the time of the trial of said Cause, And was notified by this affiant to produce his defence if any he had, that he then told this affiant who was then already in court in said Cause: That he had no defence to put in before a one horse Court, that the affiant after the hearing of the Cause informed said Davis what the amount of the judgment rendered against him was: That said Davis then said you may go to hell with the judgment:-

Subscribed and Sworn to
before me this 28th day of June, Price R. Webster.
1860: Mr J. Derrick Clerk

Endorsed

Filed June 28th 1860.

Mr J. Derrick Clerk

Affiant of John R. Herring

William Randall Esq.

Ag't
Ichabod Davis

In the Winnebago County
Circuit Court on Certiorari
from Justice Price R. Webster.

State of Illinois

Winnebago County, J.

John R. Herring & Allen Rice

each for himself being duly sworn upon his oath saith that he is acquainted with the parties William Randall & Ichabod Davis in this suit: That on the 9. day of July 1839. he was present at the office of Price B. Melster in Durand in said County that while there an altercation took place between said William Randall and said Ichabod Davis about the said suit then & there pending between said parties, that said Davis then & there denied the truth of the amount attempted to be sustained against him and claimed that he was not indebted to the amount which Randall claimed: That he also alleged that he had mislaid his book in which the account of their dealings was kept, and that he could not find the same: That said Davis did make objection to the rendition of any judgment against him:

That said Randall then & there offered to said Davis that if he would in twenty days or immediately after his return from Iowa bring his accounts and settle with him, he said Randall would allow him all credits and make all deductions from his said Randall's claim which was just and right:

J. R. Herring.

Said Allen Rice further saith that said Randall then & there said to said Davis and to the justice Price B. Melster that he would let the case drop or stand just as, or where it was: Said Randall had previous to the said agreement about a future settlement in twenty days or

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after Davis return from Iowa made oath that he feared that he would lose his debt unless an execution was issued forthwith - but this affiant believes that no judgment had been recorded at the time said Randall made said last mentioned oath - said affiant paid particular attention to the proceedings before said justice:-

Sworn to by both affiants before

me this 2^d day of March 1860. Allen Rice:

Mr D. Derrick Clerk

Endorsed

Filed Oct 7/60

Mr D. Derrick Clerk

Affidavit of Michael Clark

William Randall & Co

vs.

Shabod Davis

In appeal in the Minnesota Cir.

Court September Term 1860

Minnesota County J.

Michael Clark being duly sworn deposes and says that on the ninth day of July A.D. 1859. he was present at the office of Ezra B. Webster a Justice of the Peace where the above entitled Cause was called for trial by said justice; that said Davis then objected to the trial of said Cause at that term because he had paid about eighteen dollars of Plaintiff's account for which he was not credited, that he had lost his account book and therefore could not settle then nor try the Cause:-

That said Plaintiff Randal then offered if Davis would promise to come and settle with him in 20 days he would dismiss the case. That Davis said he was going to Iowa and did not know as he could be back in 20 days but promised that as soon as he could get back and get his account books he would call & settle with Plaintiff: That when upon he heard said Randal say to the Justice 'dismiss the Cause and I will settle it another time with him: I did not notice any written sworn in the case: I heard Davis say to the Justice if he rendered any judgment in the case he would appeal it: This was before Randal told the Justice to dismiss the Cause:

Sworn to & Subscribed before
me this 25th day of September ~ Michael Clark
1860. At Penneyr Dep Clerk ~

Enclosed

Filed Sept 25. 1860

Mrs Derrick Clerk
By At Penneyr Dep "

And afterwards to wit on the 5th day of Decem^r
Oct^r 1860 at being one of the days of the September Term
of the Winnebago County Circuit Court the following entry
was made as appears of Court record to wit:

William Randall Co.

18
Mr.
Isabod Davis

Oct 5. 1860

And now come the Plaintiffs by
Harnes their Attorney & the Defendant by Burnap & Harvey
his Attornies also Come, & the Court having heard evidence
& argument of Counsel on motion of Plaintiffs to dismiss
Writ of Certiorari herein. sustains the said motion, and
that the said writ be dismissed at Petitioners Costs. It is
therefore Considered & ordered by the Court, that the Plain-
tiffs have & recover of the Defendant their Costs & Charges
herein expended & that they have execution therefor.

To which decision of the Court the Defendant
excepts:-

me this 25th day of September 1891 Michael Crane

Bill of Exceptions:

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In the Minnesota Circuit Court
William Randall & Co
Agt
Schabod Davis. Appeal.

This day comes on to be heard
the motion heretofore filed in this Cause, that the writ
of Certiorari therein be dismissed; the said motion being
as follows: to wit:

William Randall & Co

By
Schabod Davis.

Minnesota County

Circuit Court Feb Term 1860.

The Plaintiff herein moves the Court that the
Certiorari in this Cause be dismissed and assigns as
reasons, that there was no bond given, that the Petition
in this Cause is insufficient indefinite and uncertain, and
that the said Defendant does not shew facts to bring
him self within the law as entitled to said writ or that
he will shew by affidavits untruthfulness.

S. F. Warner

Atty for Deff

Endorsed

"Motion to dismiss the writ"

Filed July 14 /60

W. B. Derrick Clerk

And the Petition for the said writ of Certiorari

having been read as the same appears on the files in the said Cause, the Counsel for the appellees (plaintiffs), offered affidavits to disprove facts alleged in the said petition as follows to wit:

State of Illinois

Winnebago County, ss. } William Randall being
by me first duly sworn deposes and says that he is one
of the plaintiffs in the suit tried before Price B. Webster
on the 9th day of July A D 1859 wherein William Randall
& Co were Plaintiffs and Ichabod Davis was Defendant
now pending in the Winnebago County Circuit Court that
on the said trial before Price B. Webster the said Davis
was present and then knew the judgment rendered against
him for the amount the same rendered. And after the same
was so rendered against him promised this affiant to fix
the same with him in a short time, then stating that he
was going to Iowa for a few days and on his return he
would fix it the judgment up with this affiant. That short-
ly after the judgment was rendered against him he
went away for a few days but shortly returned to said Win-
nebago County, and on his return failed to pay the same
as he had agreed to do and that he caused execution
to issue upon the said judgment, but no money was made.
Subscribed and sworn to

before me this 29th day of
July A D 1860.

S. W. Cleveland

Justice of Peace "recd."

Wm Randall

Endorsed

"Filed March 2/60

W B. Derrick Clerk"

State of Illinois

Wennebago County, } William Randall being by me
first duly sworn deposes and says that he was present before
Price B. Webster a Justice of the Peace in said County at a
trial wherein William Randall & Co were plaintiffs and
Ichabod Davis was defendant, and that Ichabod Davis was
present and was at the time of the trial notified to put in his
defense thereto if he had any, that said Davis said that he
had no defence to make to put in before a one horse Court.

That after the trial the Court informed him of the judgment
rendered against him. That thereupon said Davis remarked
you may go to Hell with your judgment;

Subscribed & sworn to before

this 28 day of June 1860

Wm Randall.

W B. Derrick Clerk

Endorsed

"Filed June 28 1860

W B. Derrick Clerk"

First affidavit of Price B. Webster

State of Illinois. } Price B. Webster being by me first
Wennebago County, } duly sworn deposes and says that
he is the Justice of the Peace before whom William Randall
& Co recovered a judgment against one Ichabod Davis on

the 9th day of July A.D. 1859. for the sum of Fifty eight dollars and four Cents besides costs, and which has been taken by writ of Certiorari to the Circuit Court of Winnebago County And this affiant further says that on the day of the trial and of the rendition of the judgment against said Davis:

The said Davis was present at the trial of said Cause And then knew of the rendition of the judgment in said Cause against him, and made no objection to the rendition of said judgment against him, that on said trial it was proven to the satisfaction of the Court that the said Davis was indebted to the plaintiff in amount of the judgment rendered against him:

Subscribed and sworn before
me this 29th day of February } Price B. Webster
1860: S. V. Cleveland }
Justice of Peace, Seco. }

Endorsed

"Filed March 2nd 1860

W. B. Derrick Clerk"

Second affidavit of Price B. Webster.

State of Illinois } Price B. Webster being by me first
Winnebago County } duly sworn deposes and says that
he is the Justice of the Peace who tried the Cause wherein
William Randall & Co were plaintiff and Ichabod
Davis was Defendant which Cause has since been taken

to the Circuit Court of Winnebago County by writ of Certiorari and which suit was the only cause between the same parties ever tried before this affiant: That the said Ichabod Davis was present at the time of the trial of said Cause, and was notified by this affiant to produce his defense if any he had, that he then told this affiant who was then acting as Court in said Cause, that he had no defense to put in before a one horse Court: That this affiant after the hearing of the Cause informed said Davis what the amount of the judgment rendered against him was: That said Davis then said you may go to Hell with the judgment:

Subscribed and sworn to {
before me this 28th day of June { Price B. Webster:
1860. W. B. Derrick Clerk }{

Endorsed

"Filed June 28th 1860

W. B. Derrick Clerk

The Counsel for the Defendant objected to the introduction of the said Affidavits on the ground that the facts stated in the Petition were to be taken as true, and the truth thereof could not be tried upon affidavits. And the Counsel for the Defendant stated they had affidavits to introduce if affidavits were admitted, as follows.

Affidavits of John R. Herring & Allen Rice

William Randall & Co

Ag't
Isabod Davis

In the Winnebago County
Circuit Court on Petition
from Price B. Helber

State of Illinois

Winnebago County, ss.

John R. Herring & Allen Rice
each for himself being duly sworn upon his oath saith
that he is acquainted with the parties William Randall
& Isabod Davis in this suit: That on the 9th day of
July 1859 he was present at the Office of Price B. Helber
in Durand in said County that while there an altercation
took place between said William Randall and said Isa-
bod Davis about the said suit then and there pending be-
tween said parties, that said Davis then and there denied
the truth of the amount attempted to be sustained against
him and claimed that he was not indebted to the amount
which Randall claimed: That he also alleged that he
had mislaid his pass book in which the account of their
dealings was kept and that he could not find the same
That said Davis did make objection to the rendition of
any judgment against him: That said Randall then
& there offered to said Davis that if he would in twenty
days or immediately after his return from Iowa bring
his accounts and settle with him, he said Randall
would allow him all credits and make all deduc-
tions from his said Randalls claims which was just
& right:

J. R. Herring

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Said Allen Rice further saith that said Randall then & there said to said Davis and to the Justice Price B. M. B. that he would let the case drop or stand just as or where it was - said Randall had previous to the said agreement about a future settlement in twenty days or after Davis returned from Iowa - made oath that he feared that he would lose his debt unless an execution was issued forthwith - but this affiant believes that no judgment had been recorded at the time said Randall made said last mentioned oath - said affiant paid particular attention to the proceedings before said Justice sworn to by both affiants.

Before me this 2^d day of
March 1860

Allen Rice.
W. B. Derrick Clerk

Endorsed

Filed Oct-5/60
W B Derrick Clerk

Affidavit of Michael Clarke

William Randall vs

vs.
Isabro Davis

In appeal in the Minnetago
Circuit Court September Term
1860.

Minnetago County sp.

Michael Clarke being duly sworn
deposes & saith that on the month day of July 1859,

he was present at the Office of Prci B. Webster a Justice of the Peace where the above entitled Cause was called for trial by said Justice: That said Davis then objected to the trial of said Cause at that time because he had paid about eighteen dollars of plaintiff account for which he was not credited, that he had lost his account-book & therefore could not settle then, nor try the Case: That said Plaintiff Randall then offered if Davis would promise to come & settle with him in 20 days he would dismiss the Case, that Davis said he was going to Iowa and did not know as he could be back in 20 days but promised that as soon as he could get back and get his account-book he would call and settle with Plaintiff: That thereupon he heard said Randall say to the Justice "dismiss the Cause and I will settle it another time with him: I did not notice any witness sworn in the Case: I heard Davis say to the Justice if he rendered any judgment in the Case he would appeal it, this was before Randall told the Justice to dismiss the Cause:

Sworn to & subscribed
before me this 25th day of { Michael Clark
September 1860

At Pennoyer Dep Clerk

Endorsed

"Filed Sep^r 25. 1860

Mr J. Derrick Clerk

By At Pennoyer Dep "

The Court, after hearing the arguments of counsel, refused to admit the said affidavits: And upon inspecting the said petition expressed the opinion that the same was not sufficient to sustain the said writ of Certiorari. It appearing to the Court, that the defendant was negligent in not ascertaining that judgment had been rendered against him by the justice of the peace, that he was held bound to know what judgment the justice rendered.

And upon the Court expressing the said opinion the Counsel of the defendant waived their objection to the introduction of the said affidavits, and all the said affidavits were offered on the part of the Defendant but the Court refused to consider the same, on the ground that affidavits in the case were inadmissible, and the defendant excepts to the opinion of the Court in this behalf and his exception is allowed:

And thereupon the Court sustains the said motion to dismiss the said writ of Certiorari and the defendant excepts to the opinion of the Court in this behalf and their exception is allowed: And the said defendant prays that this bill of exceptions may be signed and sealed by the Hon Benjamin R Sheldon Judge of this Court, and order that the same may become a part of the record in this Cause, and it is so done accordingly.

Benj R Sheldon S. C.

Enclosed

Filed Oct 7/00

Mr B Derrick Act Clerk

Plaintiff Costs Winn Co Cir Court
 Defendants " " " "

\$ 11.90
 \$ 76.40

State of Illinois
 Winnebago County J. Clair A. Penoyer Clerk of
 the Circuit Court & Ex Officio Recorder in & for said County
 do hereby Certify, that the foregoing is a full & correct
 Copy of the files, & from the records ^{in my office} in foregoing entitled
 Cause duly compared therewith by me.

Witness my hand & the seal of said Court
 this 19th December 1860

Clair A. Penoyer (Clerk)

Plaintiff Costs Winn Co Cir Court \$ 11.90
 Defendants " " 76.90

\$ 61.75 being for Bond filed as returned by Shiff
 of foregoing amt of Cost.

31.

And now, to wit on the first day of the April term of the Supreme Court of the state of Illinois, in the year of our Lord one thousand eight hundred and sixty-one, at the Court House in Ottawa, before the Honorable the Justices of the same Court, comes the said Ichabod Davis, by Barnard & Harvey his attorneys, and says that in the record and proceedings aforesaid, and in giving the judgment aforesaid, there is manifest error in this, that the petition aforesaid is sufficient to sustain the said writ of certiorari, and the said Circuit Court erred in giving the opinion that the same was insufficient on the ground that the said Ichabod Davis was negligent in not ascertaining that the justice of the peace in the said record and proceedings mentioned had rendered judgment against him, and that he was bound to know what judgment the said justice rendered.

And also there is error in this, that the said Circuit Court refused to consider the said affidavits set forth in the said bill of exceptions, after the said Ichabod Davis had waived his objection to the same, and had offered them to the court on his part.

And also there is error in this, that the said Circuit Court ought to have overruled the said motion to dismiss the said writ of certiorari, and ought not to have sustained the same. Where-

fore the said Ichabod Davis prays that the said judgment dismissing the said writ of certiorari may be reversed, and that he may be restored to all things which he hath lost by reason thereof.

Barnaby Harvey,
Attornies for Plaintiff in Error.

Now at this day comes the Defendants Error by Warner & Braze their attorneys and for Joinder in Error herein says That there is no Error in the foregoing record as alleged &c

April 16. 1861

Warner & Braze

Attornies for Deft in Error

123-
Supreme Court.

Ichabod Davis

apt.
William Randall & Co.

Copy of Record and
Assignment of Errors.

Filed Jan. 16. 1861
L. Deland
clerk