

14486

No. _____

Supreme Court of Illinois

Fuller et al.

vs.

Langford et al

71641  7

18
STATE OF ILLINOIS,
SUPREME COURT,
Third Grand Division

No. 78

Fuller
vs
Langford

14486

1863

SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, APRIL TERM, 1863.

HERNANDO A. FULLER and
ANDREW DeGRAFF,

Plaintiffs in Error,

vs.

JOSEPH E. LANGFORD and
GRICE W. THURLBY, for use of
JOSEPH E. LANGFORD,

Defendants in Error.

ERROR TO STEPHENSON.

This was a proceeding of foreign attachment, brought under the Statute, by the defendants in error against the plaintiffs in error—the latter being non-residents.

1 The affidavit and bond were filed in the Stephenson Circuit Court, August
6 10th, 1859. Also a preceipe, directing the Clerk to issue a writ of attachment
to *Livingston* County, and a writ was accordingly issued, returnable on the
7 first Monday of September, 1859, directed to the Sheriff of Livingston County,
(37) to execute.

9 The writ was returned by the Sheriff of Livingston County levied on real
estate of Hernando A. Fuller, one of the defendants in the attachment suit,
10 and without personal service, August 11th, 1859.

13 Proof of publication of notice to defendants was made and filed Dec. 7th.

16 Dec. 9th, Counsel for the defendants below, appearing for that purpose,
moved to quash the writ, for the reason that said writ was sued out of the
(34) Stephenson Circuit Court, directed to Livingston County, and that no writ
had been issued to Stephenson County. The plaintiffs below then entered a
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21 April 16th. The Court overruled the motion to quash the amended writ.
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32 Jan. 11, 1861. The plaintiffs remitted \$2,243 49 of the damages assessed by the jury, and the Court overruled the motion in arrest of judgment, which 33 ruling was excepted to, and rendered judgment for \$5,200 00, (being the amount assessed by the jury less the amount remitted,) and costs, and ordered special execution to sell the property attached to satisfy the same.

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1. The Court erred in overruling the motions of the defendants below and each of them to quash the writs.

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Abstract

Filed April 22. 1863
L. Ireland
Clerk

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BRIEF AND POINTS FOR PLAINTIFF'S IN ERROR.

A writ of attachment was sued out of the Stephenson Circuit Court by defendants in Error against the plaintiffs in Error, directed to the Sheriff of Livingston County to execute. The writ was returned by the Sheriff of Livingston County, executed by levy on land of Hernando A. Fuller, one of the defendants in Attachment, and without personal service. The Court, after this writ was returned executed, permitted it to be amended so as to make it directed to the Sheriffs of Livingston and Stephenson Counties respectively. The Sheriff of Stephenson then made a return on the same writ, no property found, and defendants not found in his county.

On motion of the plaintiffs in Attachment, the Court then ordered an "Alias" writ to issue to Stephenson county. This writ issued and was returned by the Sheriff of Stephenson county, no property found, and defendants not found in his county. No other writ issued in this cause. No appearance was made by defendants except to enter their motions presenting the question of jurisdiction. Proof of publication of notice to defendants was made, and their default taken, for want of appearance or plea, and judgment rendered with special execution to sell the property attached.

1.

The first writ was not amendable.

Greene v. Kettleby, 8 Dowl. P. C. 783.

Colston v. Berende, 3 Ib 253.

2 Ib 633.

Byfield v. Street, 10 Bing. 277.

Lewis v. Shelly, 2 Marsh. 426.

7 Taunt. 146.

2 Gilm. 155.

A void act is incapable of confirmation, or of becoming the basis of a right.

Bybee v. Ashby, 2 Gilm. 151.

Powell v. Harman, 2 Peters, 241.

2.

An alias writ is erroneous, where the first writ should be quashed.

Rattan v. Stone, 3 Scam. 540.

The return on the alias writ was made 14 days after it issued, and more than two months before the return day. The officer should have held it until returnable and made due search that he might serve it on defendants. They are entitled to personal notice whenever practicable.

Morris v. Trustees, 15 Ill. 266.

3.

There was no personal service on the defendants, and no service by levy on property in the county where the suit was commenced. The only service of any writ in the cause was the levy on the land of H. A. Fuller, in Livingston County. The Court had no jurisdiction.

Hinman v. Rushmore, 27 Ill. 509.

F. C. INGALLS,
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Brief
for Plaintiff in Error

Filed April 14, 1863

L. Leland Clerk

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ERROR TO STEPHENSON.

BRIEF AND POINTS FOR PLAINTIFF'S IN ERROR.

A writ of attachment was sued out of the Stephenson Circuit Court by defendants in Error against the plaintiffs in Error, directed to the Sheriff of Livingston County to execute. The writ was returned by the Sheriff of Livingston County, executed by levy on land of Hernando A. Fuller, one of the defendants in Attachment, and without personal service. The Court, after this writ was returned executed, permitted it to be amended so as to make it directed to the Sheriffs of Livingston and Stephenson Counties respectively. The Sheriff of Stephenson then made a return on the same writ, no property found, and defendants not found in his county.

On motion of the plaintiffs in Attachment, the Court then ordered an "Alias" writ to issue to Stephenson county. This writ issued and was returned by the Sheriff of Stephenson county, no property found, and defendants not found in his county. No other writ issued in this cause. No appearance was made by defendants except to enter their motions presenting the question of jurisdiction. Proof of publication of notice to defendants was made, and their default taken, for want of appearance or plea, and judgment rendered with special execution to sell the property attached.

1.

The first writ was not amendable.

Greene v. Kettleby, 8 Dowl. P. C. 783.

Colston v. Berende, 3 Ib 253.

2 Ib 633.

Byfield v. Street, 10 Bing. 277.

Lewis v. Shelly, 2 Marsh. 426.

7 Taunt. 146.

2 Gilm. 155.

A void act is incapable of confirmation, or of becoming the basis of a right.

Bybee v. Ashby, 2 Gilm. 151.

Powell v. Harman, 2 Peters, 241.

2.

An alias writ is erroneous, where the first writ should be quashed.

Rattan v. Stone, 3 Scam. 540.

The return on the alias writ was made 14 days after it issued, and more than two months before the return day. The officer should have held it until returnable and made due search that he might serve it on defendants. They are entitled to personal notice whenever practicable.

Morris v. Trustees, 15 Ill. 266.

3.

There was no personal service on the defendants, and no service by levy on property in the county where the suit was commenced. The only service of any writ in the cause was the levy on the land of H. A. Fuller, in Livingston County. The Court had no jurisdiction.

Hinman v. Rushmore, 27 Ill. 509.

F. C. INGALLS,
For Plaintiffs in Error.

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Fuller et al

2

Langford et al

1 Brief
for Plaintiffs in Error

Filed April 14, 1863

Leland et al

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Stephenson County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of Stephenson County, before the Judge thereof, between Joseph & Sanford and Grace W Shulby for the use of Joseph & Sanford

plaintiffs..., and Hernando A. Fuller and Andrew De Graff

defendants..., it is said that manifest error hath intervened, to the injury of the said Defendants

as we are informed by their complainants the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law. Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Joseph & Sanford and Grace W Shulby

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

notice, together with this writ.

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this twentieth day of September in the year of our Lord One Thousand Eight Hundred and Sixty-two

L. Leland

Clerk of the Supreme Court.
J. A. Miller Deputy

Honorabile J. Shuller, Esq.

vs. Andrew D. Sniff

No.

vs.

Joseph E. Langford and
Gris W. Thurlby for use of
Joseph E. Langford

SCIRE FACIAS.

Filed Jan'y. 28. A. D. 1862.

Adrian Clerk.

State of Illinois }
Stephenson County }Served the within writ by
reading the same to the within named Joseph
E. Langford, on the 15th day of September
AD 1862. The within named Gris W. Thurlby
not found in my county.Dated December 1st 1862William A. Youngman
Sheriff of Stephenson
County Illinois

In the Supreme Court of
Illinois, Third Grand Division
April Term AD 1863

Mernando A. Fuller &
Andrew DeGraff

Plaintiffs in Error

4

Joseph E. Langford &
Grace W. Thulby, for and
of Joseph E. Langford,

Error to
Stephenson

Defendants in Error.

State of Illinois }
Stephenson County }
Frederic C. Fugate of
said County, being first duly
sworn deposes and says that he is counsel for
the above named Plaintiffs in Error, that
Grace W. Thulby, one of the said Defendants
in Error is a now resident of this State, and
resides, as this affiant is informed, in the city
of Detroit in the State of Michigan.

Fred C Fugate

Subscribed & sworn to before
me this 2nd day of January 1863 }
W Shaffer Clerk of Circuit }
Court of said County }
By E P Hodges Dep

Hernando A. Puller
etal

y

Joseph E. Langford
etal

Affidavit of non residence

Filed Jan'y. 28, 1863,
L. Island
Clk.

State of Illinois }
LaSalle County } ss

STATE OF ILLINOIS, Supreme Court within and for
the Third Grand Division of said State.

Hernando A. Fuller and Andrew De Graff,
Plaintiffs in Error,

vs.
Joseph E. Langford and Grice W. Thurlby, for use of
Joseph E. Langford,

Defendants in Error.

Error to the Stephenson County Circuit Court.

Whereas, the said Hernando A. Fuller and Andrew
De Graff, have sued out a writ of error from said Su-
preme Court, to reverse a judgment obtained by said
Joseph E. Langford and Grice W. Thurlby, for use of
Joseph E. Langford, against Hernando A. Fuller and
Andrew De Graff, in the said Circuit Court of
Stephenson county, which said writ of error is now
pending in said Supreme Court; and whereas, a writ
of *scire facias* has been duly issued herein, returnable
on the first day of the next term of said Supreme
Court, to be held at Ottawa, in said State, on the
first Tuesday after the third Monday in April next,
according to law; and whereas, also, it appears by
affidavit on file in the Clerk's office of said Supreme
Court, that the said Grice W. Thurlby, one of the said
defendants in error, is a non-resident of this State,
and resides in the city of Detroit, in the State of
Michigan;

Now, therefore, you, the said Grice W. Thurlby, the
said defendant in error, whose non-residence ap-
pears as aforesaid, are hereby notified to be and
appear before the justices of said Supreme Court, to
be held at Ottawa, in said State, on the first Tues-
day after the third Monday in April next, to hear the
record and proceedings brought into said Supreme
Court on return of said writ of error, and the errors
assigned, if you shall see fit, and further to do and re-
ceive what said Court shall order in this behalf.

Dated this 9th day of February, A. D. 1863.

L. LELAND, CLERK.

FRED. C. INGALLS, Atty for Plfs in Error. Feb 14-63

This certifies, that the annexed
notice in the case of Hernando A.
Fuller and Andr De Graff, as Joseph E.
Langford, &c., was published four weeks
successfully in the Ottawa Free Trader
a weekly newspaper published at Ottawa,
LaSalle county, State of Illinois com-
mencing with the No. of said paper
issued February 14th, A.D. 1863, and end-
ing with the No. issued March 7th, A.D. 1863;
also, that on or about the 14th day of ~~April~~
~~and~~ February, A.D. 1863, I mailed a copy
of said paper, containing the annexed
notice, ~~and~~ marked with a pen ss as to
draw his attention to it, to Grice W. Thurlby,
Detroit, Michigan, by paying postage.

Wm Osman
Publisher

State of Illinois } ss
County of LaSalle }

William Osman being first
duly sworn on oath says that the foregoing certificate
is true.

Subscribed & Sworn before
me this 21st day of April 1863

Wm Osman

L. Leland Clerk,
by J. D. R. S. S. S.



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Puller
in
Langford

—
Proof. Pub. notice
to non resident

In the Supreme Court of Illinois
Third Grand Division April Term 1863

Hernando A. Fuller
& Andrew De Graff
Plaintiffs in Error

^{my}
Joseph E. Langford &
Eise W. Thurlby, for
use of Joseph E. Langford
Defendants in Error

Error to Stephenson

The clerk will please issue
writ in the above entitled cause, for service
on the above named defendants in Error
(being plaintiffs in the Court below) directed
to the Sheriff of Stephenson County to execute
Frederic Ingalls
Att'y for Plffs in Error

78

Fuller et al
Langford et al

Recipe for writ

Filed September 10th 1862
L. Leland
Clerk

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

Pleas before the Honorable
Benjamin R. Sheldon Judge of the Southern
Judicial Circuit of the State of Illinois
begun and held at the Court House in the
City of Freeport in said County on the First
day of September A.D. 1859.

Present: Hon Benjamin R. Sheldon Judge
W. L. Meacham State Attorney
C. F. Taggart Sheriff
S. W. Smitcan Clerk

1
State of Illinois }
Stephenson County } ss

Joseph E. Langford being first duly sworn on his oath deposes and says that Hernando A Fuller and Andrew de Graff lately doing business under the name, style and firm of Fuller & de Graff are indebted to this deponent Joseph E. Langford and Grace W. Thurlby, now for the use of this deponent, in the sum of fifteen thousand two hundred fifty three dollars & thirty six cents (\$15253 $\frac{36}{100}$) & being in a sum exceeding twenty dollars) and that the nature of said indebtedness is as follows, viz: twelve thousand seven hundred and fifty three dollars and thirty six cents of the said indebtedness is for grading & was done by this deponent and said Thurlby upon the Racine & Mississippi Rail Road in said County & State under and by virtue of a certain contract made and concluded on the 9th day of June AD 1856 between this deponent and said Grace W. Thurlby of the one part and said Fuller & said de Graff under the name and style of Fuller & de Graff of the other part, and twenty five hundred dollars of the said indebtedness is for interest upon the aforesaid sum of \$12753 $\frac{36}{100}$ since September 1st 1859 and for damages on account of a breach of said

Contract made & suffered on the part of said
 Fuller & de Groff And this deponent further
 swith that said Hernandez A Fuller and
 Andrew de Groff are not either of them residents
 of the State of Illinois - And this deponent
 swith further that said Thurlby has assigned
 all his interest and right in said in-
 vestment to this deponent and further
 saith not -

Subscribed & sworn to before me } J. E. Langford
 a Notary Public in & for Buckeye }
 Township in said County & State }
 as witness my hand & notarial }
 seal this 9th day of August AD 1859 }

(Signature)

Benjⁿ Vosnblaser

Notary Public

Filed Aug 10. 1859
 W. Guiteau clk
 By Thos North depts

Know all men by these Presents, That we, Joseph E. Langford as principal & John Sayer William Kream & William W. Robey are held and firmly bound unto Hernando A. Fuller & Andrew de Groff in the penal sum of Thirty one Thousand dollars to the payment of which well and truly to be made we bind ourselves our and each of our Heirs Executors and Administrators, jointly and severally, firmly by these presents. Sealed with our seals and dated this 9th day of August A.D. 1859

The condition of this obligation is such, That whereas the above bounden Joseph E. Langford has on the day of the date hereof made an attachment out of the Circuit Court of Stephenson County in the State of Illinois at the suit of Joseph E. Langford & Isaac W. Thurlby for use of Joseph E. Langford against the estate of the above named Hernando A. Fuller & Andrew de Groff late firm of Fuller & de Groff for the sum of Fifteen Thousand, Two Hundred fifty three & $\frac{3}{4}$ dollars and the same being about to be sued out of said Court returnable on the first Monday of September next to the term of the Court then to be holden at the Court House in Freeport in said County. Now if the said Joseph E.

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Langford & Gusi W. Thurlby shall prosecute their suit with effect, or in the case of failure therein, shall well and truly pay and satisfy the said Fernando A. Fuller & Andrew Mc Guff all such costs in said suit, and such damages as shall be awarded against the said Joseph E. Langford & Gusi W. Thurlby his Heirs Executors or Administrators in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment, then the above obligation to be void, otherwise to remain in full force and effect.

Witness Present	}	J. E. Langford	Seal
F. W. Brawley		John Sager	Seal
		William Kramers	Seal
		William W. Robey	Seal

Filed Aug 10. 1859
 S. W. Guiteau clk
 By Thos North Depy

5

Joseph C Langford
& Eric W. Thurlby
for the use of Joseph C.
Langford

Hernando A Fuller &
Andrew de Graff

Stephan County
Circuit Court

I do hereby enter myself
security for costs in this cause and ack-
nowledge myself bound to pay or cause
to be paid all costs which may accrue
in this action either to the opposite party
or to any of the officers of the Court in
pursuance of the laws of this state -
Dated this 9th day of August 1859
J. Wilson Shaffer

Filed Aug 10, 1859

L W Guiteau clk

By Thos North Def

6 Joseph C. Langford &
Grisie W. Thurlby
for the use of
Joseph C. Langford
jr

Cy Court of
the Co Ills
Sept 26 1859

Hernando A Fuller &
Andrew Mc Gaff, lately
doing business under the
name, style & firm of
Fuller & Mc Gaff

In Attachment &

Am't of Indebtedness
Mon to \$15253 $\frac{34}{100}$

Clerk will please issue a writ
of attachment in above entitled cause
directed to the Sheriff of Livingston Co
Ills returnable according to law

Smith & Bradley
for Plaintiff

To L W Guiteau Esq
Clerk Cir Court
Steer Co Ill

Filed Aug 10. 1859
L W Guiteau Clerk
By Thos North Dep

State of Illinois }
 Stephenson County } 2^{rs}

The People of the State
 of Illinois to the Sheriffs respectively of
 Stephenson & Livingston Counties, res-
 pectively, greeting,

Whereas Joseph E.
 Langford hath complained on oath to
 Luther W. Luitcan Clerk of the Circuit Court
 of Stephenson County, in the State of
 Illinois that Hernando A. Fuller and
 Andrew De Groff lately doing business
 under the name style & firm of Fuller
 & De Groff are jointly indebted to Joseph
 E. Langford & Greer W. Thurstby, for the
 use of Joseph E. Langford to the am-
 ount of fifteen thousand two hundred
 & fifty three dollars & thirty six cents,
 and oath having been also made that
 the said Hernando A. Fuller and
 Andrew De Groff reside out of this State
 And the said Joseph E. Langford having
 given bond and security according to the
 direction in the act in such cases made
 and provided:

We therefore command you respectively
 that you respectively attach so much of
 the estate, real or personal, of the said

8 Hernando A Fuller & Andrew de Graff
to be found in your respective Counties
as shall be of value sufficient to satis-
fy the said debt and costs, according
to the said complaint; and such estate
so attached in your hands to secure, or
so to provide that the same may be
liable to further proceedings thereupon
according to law, at a Circuit Court
to be holden at Freeport within and
for the County of Stephenson on the
first Monday of September next; so as
to compel the said Hernando A Fuller
& Andrew de Graff to appear and answer
the complaint of the said Joseph A Lang-
ford and Gren W. Thurlby for the use
of said Joseph A Langford, and that
you also respectively summon -
as garnishee to be and appear before
the said ~~Circuit~~ Court on the said first
Monday of September next, there and
then to answer what may be objected
against him; when and when you
respectively shall make known to the
said Court how you respectively have
executed this writ. And have you
respectively then and there this writ.
Witness Luther W. Gaitan,

9 Clerk of our said Court and the seal thereof
At Freeport this tenth day of August in the
year of our Lord One Thousand Eight Hun-
dred and Fifty nine



J. W. Gintean
Clerk

State of Illinois }
Livingston County } ss

By virtue of the within
Writ of attachment I have this day attached
the following described Real Estate as the
property of the within named Defendant
Hernando A Fuller to wit, The North half
of the North West quarter and the East half
of the South East quarter and the North
half of the South West quarter and the
North east quarter of section No Twenty
(20) and the South west quarter of the North
East quarter and the North west quarter
of the South East quarter and the North
East quarter of the South West quarter
and the South half of the North West
quarter of section No Thirty four (34)
and the South east quarter of the North

10 East quarter and the North half of the North East quarter of section no Thirty Three (33), all of section no Twenty Eight (28), all of section no Twenty one (21), and the south east quarter of the North east quarter and the North east quarter of the south east quarter of section no Eight (8) and the south west quarter of the south east quarter of section no Twelve (12) and the North west quarter of the north east quarter of section no Thirteen (13) and the south west quarter of section no Fifteen (15) and the south east quarter of the north east quarter of section no Twenty one (21), all of section no Twenty five (25) all of section no Twenty six (26) and the west half of the north east quarter and the east half of the north west quarter of section no Eleven (11) all of said lands being in Township no Twenty seven (27) North of Range 7 East of the 3rd Principal Meridian, also the west half of lot one (1) of the north east quarter, and lot one (1) of the north west quarter and the west half of the south east quarter, and the south west quarter of section no One (1)

11 and the north east quarter of the South West quarter, and the west half of the South East quarter, and lots one and two (1 & 2) of the North West quarter of section no Two (2) and the east half of the South East quarter and the east half of the North East quarter of section no Eleven (11) all in Township no Twenty Six (26) North of Range 7 East of the 3rd Principal Meridian, and all of section no Nine (9) in Township no Twenty five (25) North of Range 8 East of the 3rd Principal Meridian, and all of section no Thirty (30) in Township no Twenty seven (27) North of Range 8 East of the 3rd Principal Meridian, being in all Six thousand one hundred and ninety three & $\frac{1}{100}$ acres all being in the County of Livingston in the State of Illinois. The within named defendants Hernando A. Fuller and Andrew La Grapp not found in my County.

Noted Pontiac Livingston County

August Eleventh AD 1859

Sheriff Fees Levy, 50

Certificate & Return 100

Return 10
\$160

Fees paid by Plaintiff's Atty.

William J. Russell

Sheriff of Livingston County

By E. R. Maples

Deputy

12 I can find no property belonging to the
Within named Defendants on which
to levy this attachment in my County
the within named Defendants not found
in my County this 24th day of March 1860

C. F. Taggart
Shff

Frees Return 10

Stephenson County

And afterwards to wit on the 24th day of September
1859 being one of the days of the September Term
1859 of the Stephenson County Circuit Court
the following entry appears of record, to wit,

Joseph E. Langford &
Ernie W. Thurlby for the use of
Joseph E. Langford
Jr

}
}
}
} Attachment

Hernando A. Fuller & Andrew De Graff
lately doing business as Fuller & De Graff

Now on this day comes the said
Plaintiffs by Smith & Brawley their Attorney
and file their Recitation in this Cause —

13 And afterwards to wit on the 9th day of December 1859 being one of the days of the December Term 1859 of the Stephenson County Circuit Court the following ~~entry~~ appears of record to wit,

Joseph & Langford & Priscilla W. Thurlby }
for use of Joseph & Langford }
p Attachment }
Bernardo A Fuller & Andrew Mc Guff }
lately doing business as Fuller & Mc Guff }

Now on this day comes the said Plaintiff
by Smith & Brewley their Attorneys and
make and file proof of publication of notice
to defendants

Attachment Notice

State of Illinois }
Stephenson County }
of said County }
Of the December Term AD, 1854

Joseph E. Langford, and Grace W. Thurby
for the use of Joseph E. Langford

Hernando & Fuller and Andrew De Graff lately
doing business under the name, style & firm of Fuller & De Graff.

14 Public Notice is hereby Given To the said Hernandez A Fuller and Andrew De Groff, that a writ of Attachment issued out of the office of the Clerk of the said Circuit Court of Stephenson County in the State of Illinois dated the 10th day of August AD 1859 at the suit of the said Joseph E Langford and Grace W Shurlby for the use of Joseph E Langford and against the estate of the said Hernandez A Fuller and Andrew De Groff, for the sum of fifteen thousand two hundred and fifty three dollars and thirty six cent, directed to the Sheriff of Livingston County, in the State of Illinois, to execute, which said writ has been returned executed, and that the same is pending before the said Circuit Court of Stephenson County. Now therefore unless you the said Hernandez A Fuller and Andrew De Groff shall personally be and appear before the said Circuit Court of Stephenson County in the State of Illinois, on or before the first day of the next term thereof, to be holden at the Court House in the City of Freeport, in said County of Stephenson on the first Monday in the month of December AD 1859 give special bail, and plead to the said Plaintiff's

action, judgment will be rendered against you and in favor of the said Joseph E Langford and Grace W Thurlby for the use of the said Joseph E Langford, and so much of the property attached as may be sufficient to satisfy the said judgment and costs will be sold to satisfy the same.

JW Guiteau Clerk

Smith & Brawley, Plaintiffs Attorneys.

J. W. T. Giles one of the Publishers of the Freeport Weekly Bulletin, a Newspaper published in the City of Freeport County of Stephenson and State of Illinois do hereby certify that the affixed Attachment Notice has been published for four successive weeks in said newspaper! the first insertion being on the 6th day of October A.D. 1859 and the last on the 27th day of October A.D. 1859 for which we charge \$5.00

W. T. Giles

Filed Decr 7. 1859

JW Guiteau Clk

16 And afterwards to wit on the 9th day of December 1859 being one of the days of the December Term 1859 of the Stephens County Circuit Court the following entry appears of record to wit:

Joseph E. Langford & Eric W. Threlby }
for the use of Joseph E. Langford }
Hernando A. Fuller & Andrew McGeoff } Attachment

Now came said defendants by Turner & Ingalls their Attorneys and file their motion to discharge this writ.

And afterwards to wit on the 9th day of January 1860 being one of the days of the December Term 1859 of the Stephens County Circuit Court the following entry appears of record to wit

Joseph E. Langford, et al }
for use of Joseph E. Langford }
Hernando A. Fuller et al } Attachment

Now on this day comes the Plaintiff by Smith & Bradley their attorneys and file

17) their motion for a writ of attachment to
issue to the Sheriff of Stephenson County

Joseph E Langford et al } 2/30
vs } St Co Ct. Lond
Hernando A Fuller et al } Dec Term 1859

And now comes the
plaintiffs and move the Court for an order
to the Clerk of the Court to issue sums pro
tunc a writ of attachment to the
Sheriff of Stephenson Co in this cause
Smith & Brewley
Plaintiffs Attys

Filed Jan 9. 1860
L. W. Guiteau Clk

And afterwards took on the 23rd day of
January 1860 being one of the days of the
December Term 1859 of the Stephenson
County Circuit Court the following entry
appearing of record, to wit,

Joseph E Langford et al }
vs } Attachment
Hernando A Fuller et al }

18 Now on this day come the plaintiffs by
Smith & Bradley their attorneys and file
their motion for leave to the Clerk to amend
the writ issued in this cause.

Joseph E. Langford et al } Ste. Cl. Ct.
vs } Dec. Term 1859
Herrando A. Fuller et al }

And now comes the Plaintiffs
by Smith & Bradley their attys and move
the Court for an order to the Clerk of this
Court to amend the writ in this cause so
as to make it directed to the Sheriffs of
Stephenson & Livingston Counties respectively -
Smith & Bradley
Plffs Attys

Filed Jan 23rd 1860
J. W. Laitan Clk

And afterwards to wit on the 24th day of
January 1860 being one of the days of the
December Term 1859 of the Stephenson &
Livingston Circuit Court the
following entry appears record to wit

In the Circuit Court of Stephenson
County Illinois, Of the Second Term
A.D. 1859,

Hernando A Fuller &

Andrew De Graff

vs

Joseph E Langford &

Luci W. Shurley for etc

and of Joseph E Langford

And now come the said defendants
by Turner & Ingalls their attorneys, and
move the court here that the said
amended writ in this cause be quashed
for the reasons,

1 That no writ was sued out or
issued to Stephenson County at any time
before the said writ directed to Livingston
County was returned.

2 For the reason that the said writ
was irregular and void, and the amend-
ments does not cure the irregularity or
make the writ valid,

3 For the reason that the said amend-
ed writ is irregular and invalid.

4 For the reason that one writ of
attachment cannot issue to two different counties.

Filed Jan 25. 1860

L. W. Guiteau clk

Turner Ingalls
Attys for Defts

21 And afterwards to wit on the 16th day of April 1860 being one of the days of the April Term 1860 of the Stephenson County Circuit Court the following entry appears of record to wit

Joseph E. Langford et al }
 pp } Attachment
 Hernando A Fuller et al }

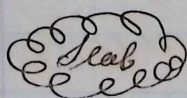
Now on this day came on to be heard the defendants motion to Quash this writ of Attachment, and after hearing argument of Counsel the motion is overruled, to which ruling of the Court the Defendants try their Atty except. On motion of Plaintiffs by Smith & Brawley their attorneys it is ordered that an alias writ of attachment issue to defendants to the Sheriff of this County to execute —

23

the said Complaint; and such estate so
attached in your hands to secure me
to provide that the same may be liable
to further proceedings thereupon, accord-
ing to law at a Circuit Court to be
holden at the Court House in Freeport
within and for the County of Stephens
on the first Monday of September next
so as to compel the said Hernandez
A Fuller & Andrew de Groff to appear
and answer the Complaint of the said
Joseph E Langford & Grace W Shulby
for the use of Joseph E Langford and
that you also summon as I am directed

him and appear before the said Court on
the said day of next then
and there to answer what may be
objected against him, when and where
you shall make known to the said Court
how you have executed this writ
And have you then and then this writ

Witness Luther W. Guiteau
Clerk of our said Court and the seal
thereof at Freeport this 13th day of June
in the year of our Lord One Thousand
Eight Hundred and Sixty



L W Guiteau
Clerk

I can find no property belonging to
 the Within named Defendants in my
 County, the within named Hernando
 A Fuller & Andrew De Graff not found
 in my county, this 27th day of June 1860
 C. H. Taggart Shff
 Fees Return 10 cts

And afterwards to wit on the 3rd day of
 September 1860 being one of the days of the
 September Term 1860 of the Stephenson
 County Circuit Court the following en-
 try appears of record to wit:

Joseph E Langford et al }
 vs } Attachment
 Hernando A Fuller et al }

On motion of
 said Plaintiff by Bright & Brawley his
 attorneys, it is ordered that the Sheriff of
 Stephenson County have leave to amend
 his return upon the writ issued in this
 cause in accordance with the facts -
 And the said Plaintiff make and file

35 proof of publication of Notice to said de-
fendants-

Attachment Notice

State of Illinois }
Stephenson County }^{to}

In the Circuit Court of
said Stephenson County of the
September Term AD 1860

Joseph E Langford and Grace
W Thurlby for the use of
Joseph E Langford Attachment
vs

Hernando A Fuller and Andrew De Goff
lately doing business under the name, style and firm of Fuller & Goff

Public Notice is hereby given to the said Her-
nando A Fuller and Andrew De Goff that
writs of attachment in the above entitled Cause
issued out of the office of the clerk said Circuit
Court of Stephenson County, Illinois, dated
August 10th AD 1859, and June 13, AD 1860
at the suit of the said Joseph E Langford
and Grace W Thurlby, for the use of Joseph
E Langford, and against the estate of
the said Hernando A Fuller and Andrew

36 Al Groff, for the sum of fifteen thousand
two hundred and fifty three dollars and
thirty six cents, one of said writs being
directed to the Sheriff of said Stephenson
County, and one of said writs being di-
rected to the Sheriff of Livingston County
in the State of Illinois, to execute, which
said writ have been returned executed,
and that said Attachment is pending
before the said Circuit Court of Stephenson
County. Now therefore unless you the
said Hernandez A Fuller and Andrew
Al Groff, shall personally be and appear
before the said Circuit Court of Stephenson
County, in the State of Illinois, on or be-
fore the first day of the next term there-
of, to be holden at the Court House, in
the City of Freeport, in said County of
Stephenson, on the first Monday in the
month of September AD 1860, give
special bail and plead to the said plaintiffs
action, judgment will be rendered against
you and in favor of the said Joseph E
Langford and Grace W Shurley for the
use of said Joseph E Langford, and so
much of the property attached as may
be sufficient to satisfy the said judg-
ment, and costs, will be sold to satisfy

27 the same.

J M Guiteau Clerk
Bright & Bawley Plaintiffs Attorneys
Freeport June 26, 1860

J. P. R. Serogg one of the Publishers of the
Freeport Weekly Bulletin a newspaper pub-
lished in the City of Freeport County of Stephenson
and State of Illinois do hereby certify that
the affixed attachment Notice has been
published for four successive weeks in
said newspaper, the first insertion being on
the 28th day of June A.D. 1860 and the last
on the 19th day of July A.D. 1860 for which
we charge \$6 ⁵⁴/₁₀₀

J P R Serogg
September 1, 1860,

Filed Sept^r 3rd 1860
J M Guiteau clk

28 And afterwards to wit on the 4th day of September 1860 being one of the days of the September Term 1860 of the Stephenson County Circuit Court the following entry appears of record to wit

Joseph E Langford et al }
for use of Joseph E Langford } Attachments
vs }
Hernando A Fuller et al }

On motion of said Plaintiff by Brawley their Attorney the said defendants having been three times solemnly called came not but made default

And afterwards to wit on the 18th day of September 1860 being one of the days of the September Term 1860 of the Stephenson County Circuit Court the following entry appears of record to wit

Joseph E Langford & Grise }
vs }
W H Hurstly for the use of Joseph E Langford } Attachments
vs }
Hernando A Fuller & Andrew Mc Guff }
lately doing business as Fuller & Mc Guff }
Now on this day comes J C Ingalls }
Esq & and enters his motion to Quash the alias }

Motion of Attachment issued in this cause, and the Motion is denied, and excepted to. Thereupon come also a jury of twelve good and lawful men, to wit: Jared Sheets and eleven others who are severally sworn to assess the plaintiffs damages - and the hour of adjournment having arrived and the evidence not having been concluded, the further hearing is postponed until tomorrow morning.

And afterwards to wit on the 19th day of September 1860 being one of the days of the September Term 1860 of the Stephenson County Circuit Court the following entry appears of record, to wit:

Joseph E Langford & Gusi W.

Thurlocky for use of Joseph E Langford

Fernando A Fuller & Audredale Grigg

lately doing business under the style of Fuller & Grigg

Now again come the said Plaintiffs by their Attorney, and also come the jury empaneled to assess the plaintiffs damages, and after hearing further evidence the jury retire in charge of an officer, and after a short absence, they return into Court and say that they assess the plaintiffs damages at Seven Thousand Four Hundred and forty three dollars and forty nine

30 cents. Thereupon the defendants by Ingalls their
attorney enter their motion to reassess the damages

And afterwards to wit on the 20th day of
September 1860 being one of the days of the Sep-
tember Term 1860 of the Stephenson County
Circuit Court the following entry appears
of record to wit:

Joseph E Langford et al }
vs } Attachments
Fernando A Fuller et al }

Now on this day
came said defendants by Ingalls Esq their
Attorney and filed their point and motion to
reassess the damages and in award of judg-
ment in this cause -

In the Circuit Court of Stephenson
County Illinois Of the September
Term A.D. 1860.

Hernando A. Fuller x
Andrew Lee Grapp
vs
Joseph E. Langford and
Emi W. Thurley for use
of Joseph E. Langford

And now comes the said
defendants by H.C. Ingalls their attorney and
move the court to set aside the assessment of
damages by the jury in this cause and ask
order for a re-assessment, And the said
defendants also move the court to arrest the
judgment in said cause, And the said de-
fendants shad to the court then the following
reasons in support of their said motions to wit,

1. The assessment was more than the
damages proved.

2. The jury adopted a wrong rule in as-
sessing the damages.

3. There was improper evidence permitted
to go to the jury.

4. The judgment should be arrested because
there was no writ issued in this cause to Stephe-
son county at the time the writ was com-
menced, And the writ in this cause and

32 each of them were irregular and void, and should have been quashed, And for other reasons apparent ^{on} ~~on the face of the record.~~ in this cause

Fred C Ingalls

Atty for Defts

Filed Sept 20. 1860

L T Guiteau Clk

And afterwards to wit on the 11th day of January 1861 being one of the days of the December Term 1860 of the Stephenson County Circuit Court the following entry appears of record to wit:

Joseph E Langford & Grise
W Thurstby for the use of
Joseph E Langford
vs

Hernando H Fuller &
Andrew Mc Groff, doing
business as Fuller & Mc Groff

Attachments

Now on this day
came the said Plaintiffs by Bright and Brantley
their attorneys and vermic two thousand two hun-
dred & forty three dollars and forty nine cents
of the damages as heretofore assessed by the
jury in this cause, And the defendants motion

for the reannment of damages and arrest of judgment having been duly considered the same is overruled by the Court - It is thereupon considered and ordered that said Plaintiffs have and recover of said Defendants, the sum of Five Thousand Two Hundred Dollars (the same being the amount of their damages so as assessed by the jury assessed after deducting the amount by the plaintiffs remitted) together with their costs by them about their said in this behalf expended, and that the property attached be sold to satisfy the same, and that they have special execution therefor, and the said Defendants by Turnes & Ingalls their Attorney except to the overruling of the motion in arrest of judgment.

And afterwards to wit, on the 14th day of January 1861, being one of the days of the December Term 1860, of the Stephens on County Circuit Court the following entry appears of record, to wit:

Joseph E Langford et al

vs

Hernando A Fuller et al

Now on this day comes said de-

Attack name

pendants by their attorney and file Bill
of Exceptions in this cause.

In the Circuit Court of Stephenson County
Illinois, of the September Term AD 1860
Herman A Fuller &
Andrew M Graff
Attys.

Joseph E Langford and
Irene W Thurbly for and of Joseph E Langford

Be it remembered that on the ninth day of De-
cember AD 1859, it being one of the days of the
December Term AD 1859, of said Stephenson County
Circuit Court the said defendants filed their motion in
said Court to quash the writ in this cause, for the
reason that said writ was sued & issued out of
said Stephenson County Circuit Court and directed
to the Sheriff of Livingston County in the State of
Illinois, and that no writ was or has been sued
out or issued out of said Stephenson County
Circuit Court, directed to Stephenson County, And
afterwards, and on the twenty third day of January
AD 1860 it being one of the days of said December
Term AD 1859 of said Court, the said plaintiffs filed
their cross motion in said Court for an order to
amend the writ in said cause, so as to make
it read directed to the Sheriff of Stephenson

and Livingston Counties respectively. And afterwards on the twenty fourth day of January AD 1860 it being one of the days of the said December Term AD 1859 of said court, the said motion came on for hearing by the Court, and the Court thereupon allowed said plaintiffs cross motion to amend said writ, which writ was accordingly amended by clerk & afterwards overruled the said defendants motion to quash said writ. To which ruling of the Court, on overruling said defendants motion to quash said writ, and on allowing said plaintiffs motion to amend the same, the said defendants by their counsel then and there excepted, the said writ was amended as aforesaid by the clerk as follows to wit, the words respectively of Stephen son & were inserted before the words "Livingston", and the word respectively inserted before the word "Greeting", and the letter s added to the word "Sheriff" and "County", in the direction of the writ, making it read "The People of the State of Illinois to the Sheriffs of Stephenson & of Livingston Counties respect-
ively Greeting" &c. The word respectively was inserted between the word "you" and "that" and between the words, "you" and "attack" making it read "We therefore command you respectively that you respectively attack so

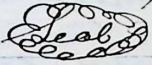
36 much of the estate &c The word respectively
was inserted between the words "you" and
"County," and the letter s added to the word
"County," making the writ read "to be found
in your respective Countys" The word
respectively was inserted between the word
"also" and "summon" making the writ
read, "and that you also respectively ^{be}summar^e
The word respectively was also inserted between
the words "you" and "shall" also between the
words "you" and "have" also between the
words "you" and "then" making the writ
read, "When and where you respectively shall
make known to the said Court how you
respectively have executed this writ, and
have you respectively then and there this writ^e
And afterwards on the 25th day of January
A.D. 1860 it being one of the days of the Dec-
ember Term A.D. 1859 of said Court, the
said defendants filed their motion to quash
the said amended writ, for the reason
that no writ had been issued to the County
of Stephenson, and that said writ was ir-
regular and void. Which said motion
came in to be heard by said Court on the
sixteenth day of April A.D. 1860, it being
one of the days of the April Term A.D. 1860 of
said Court, and thereupon the Court over-

37 ruled the said motion to which ruling of the Court in overruling said defendants motion to quash said amended writ the said defendants by their counsel then and there excepted. The original writ in this cause was issued out of said Stephenson County Circuit Court on the tenth day of August A.D. 1859 and directed to the Sheriff of Livingston County and returnable on the first Monday of September A.D. 1859 and by the Sheriff of Livingston County returned with said writ executed by levying on Real Estate of Deft Fuller, without service on said defendants the return being they were not found in his county, on the eleventh day of August A.D. 1859. After the writ was amended as aforesaid the Sheriff of Stephenson County without any sanction of the Court wrote on it the following return no property found and without service on said defendants March 24th A.D. 1860, and no other writ had then issued to Stephenson County. And afterwards to-wit on the sixteenth day of April A.D. 1860 it being one of the days of the April Term A.D. 1860 of said Court the said plaintiffs moved the Court to issue an alias writ of attachment in this cause to the Sheriff of Stephenson County, which said motion was on the said day granted by the

38 Court, and an alias writ issued out of said Court on the 13th day of June AD 1860, directed to the Sheriff of Stephenson County returnable on the first Monday of September AD 1860 which said alias writ was returned by said Sheriff on the twenty seventh day of June AD 1860, no property found, and without service on said defendants, they not being found in his county, and no other writs or writs issued in said cause. And afterwards to wit on the eighteenth day of September AD 1860 it being one of the days of the September Term AD 1860 of said Court, the said defendants filed their motion to quash the alias writ of attachment in said cause for the reason that no writ of attachment had issued to Stephenson County in this cause before or at the time the said writ was issued to Livingston County, nor until the said alias writ was issued as aforesaid on the 13th day of June AD 1860. And thereupon the Court overruled the said defendants motion to quash the said alias writ, to which ruling of the Court in overruling said defendants motion said defendants by their counsel then and there excepted. And afterwards to wit on the nineteenth day of September AD 1860, it being one

39 of the days of the September Term AD 1860
of said court, a jury was called &c, and duly
sworn to assess the plaintiffs damages in
said cause, and said jury thereupon assessed
the said damages at the sum of Seven Thousand
said four hundred and forty three dollars
and forty nine cents, And afterwards to
wit on the Twentieth Day of September
AD 1860, it being yet of the September
Term AD 1860 of said court said defendants
by their counsel filed their motion in arrest
of judgment in said cause for the reason
that no writ issued to Stephenson county
at the time this suit was commenced, and because
the writs in this cause and each of them
were irregular and void, and should have
been quashed, and for other reasons ap-
parent on the record, And afterwards on
the eleventh day of January AD 1861 it
being one of the days of the December Term
AD 1860 of said court, said plaintiffs
having remitted \$2243.49 of said verdict,
the said court overruled the said defendants
motion in arrest of judgment and rendered
judgment in favor of said plaintiffs and
against said defendants for the sum of
Fifty two hundred dollars & costs of suit and
awarded a special execution to sell the

40 properly attached, to which ruling of the Court
in overruling said defendants motion in
arrest of Judgment in said cause, and
in rendering the judgment aforesaid. The
said defendants by their counsel did then
and then except, and pray that their Bill
of Exceptions may be signed and sealed
by the Court which is done.

Benj^r R. Sheldon


Filed Jan 14, 1861.

J. W. Shaffer Clerk

per L. M. Guiteau Depy.

And afterwards ^{on} the Nineteenth day of March
A.D. 1861 the following Process was filed
in said cause to wit:

Stephenson County Circuit Court.

Bernardo A. Fuller
+ Andrew de Graff

vs.

Joseph E. Langford
and Grace M. Shulby for
use of Joseph E. Langford

The Clerk will please
prepare a full and complete Transcript of
the record in the above entitled cause

Excepting therefrom the following papers on the
files - to wit:

The Declaration in said Cause

The Execution & fee bills issued in said Cause

Fred C Ingalls

Atty for Deft

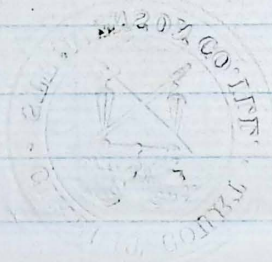
State of Illinois }
Stephenson County } c.p.

A. J. Wilson Shaffer, Clerk
of the Circuit Court in and for said
County do hereby certify that the foregoing
is a full and complete Transcript of the
Record and of the papers on file in said
above Entitled Cause as appears from the
Records and files in my Office. Excepting
the Declaration, Executions & fee bills in said
Cause -

In Testimony whereof I have hereunto
set my hand and affixed the seal of said
Court at Freeport, this 19th day of March
A.D. 1863.

A. J. Shaffer, Clerk
per C. K. Rogers, Dep





In the Supreme Court of Illinois
Of the Third Grand Division
April Term AD 1863

Hernando A. Fuller &
Andrew DeGraff — Plaintiffs in Error

27

Joseph E. Langford & Geo
W. Shulby, for use of Joseph
E. Langford. ————— Defendants in Error

And now come the said Hernando
A. Fuller, ^{and Andrew DeGraff} by Fred. C. Ingalls, their attorney, and
say that in the record aforesaid, there is
Error to wit —

- 1 The Court Erred in overruling the motions of
the defendants below, and each of them to quash
the writs
- 2 The court erred in overruling the motion
of said defendants to arrest the judgment
- 3 The court erred in rendering the judgment
aforesaid, and ordering special execution to
sell the ~~land~~ ^{property} attached, for want of jurisdiction
- 4 The court erred in not quashing the writ,
and dismissing the suit for want of jurisdiction

And the said Hernandez
A. Fuller and Adriano de Graff pray that the
judgment aforesaid, for the errors aforesaid
may be reversed &c.

Fred^d. C. Ingley
atty for Petrs in Error

78-18

Fuller et al

"

Langford et al

Records & Errors

Filed Apr. 14, 1863,

L. Iceland

Clk.