

14475

No. \_\_\_\_\_

# Supreme Court of Illinois

Fuller

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vs.

McPherson

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71641  7

STATE OF ILLINOIS,  
SUPREME COURT,  
Third Grand Division

No. 79

One opinion

3 cases

Fuller

75

~~Fuller~~

Fuller

1863

14475

# SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, APRIL TERM, 1863.

HERNANDO A. FULLER and  
ANDREW DeGRAFF,

*Plaintiffs in Error,*

*vs.*

SAMUEL H. McPHERRAN and  
ANDREW McPHERRAN, for use of  
SAMUEL H. McPHERRAN,

*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  
5 10th, 1859. Also a precipe, directing the Clerk to issue a writ of attachment  
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(35) 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.

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

15 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  
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had been issued to Stephenson County. The plaintiffs below then entered a  
16 cross motion for an order to the Clerk to amend the writ so as to make it  
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17 Jan. 24th, 1860. The Court granted the motion to amend, and overruled  
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(36) No other writ or writs issued in said cause.

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25 Sept. 4th. Default of defendants taken, (they not having appeared or pleaded.)

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27 The jury assessed said damages at \$1,814 54.

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29 when the suit was commenced, and because the writs and each of them were void and should have been quashed.

Sept. 21st. The Court overruled the motions to set aside the assessment and in arrest of judgment, which ruling was excepted to.

30 Jan. 11, 1861. The Court rendered judgment for \$1,814 54, and costs, and ordered special execution to sell the property attached to satisfy the same.

ERRORS ASSIGNED ON THE RECORD.

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.

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4. The Court erred in not quashing the writ and dismissing the suit, for want of jurisdiction.

F. C. INGALLS,  
For Plaintiffs in Error.

Fuller et al

<sup>vs</sup>  
McPherran et al

Abstract

Filed April 22-1863,

G. Ireland  
Clark

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L. Leland  
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H. C. MOORE

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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.

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### 1.

The first writ was not amendable.

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

*Colston v. Berende*, 3 Ib 253.

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*Byfield v. Street*, 10 Bing. 277.

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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,  
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### 1.

The first writ was not amendable.

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

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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.

Fuller et al

<sup>vs</sup>  
McPherran et al

---

Brief  
for Plaintiffs in Error

Filed April 14, 1863

L Seland Clerk

# SUPREME COURT.

THIRD GRAND DIVISION, APRIL TERM, 1863.

HERNANDO A. FULLER et. al.,  
*Plaintiffs in Error,*

vs.

SAMUEL H. McPHERRAN, et. al.,  
*Defendants in Error.*

ERROR TO STEPHENSON.

## BRIEF AND POINTS FOR PLAINTIFF'S IN ERROR.

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F. C. INGALLS,

For Plaintiffs in Error.

Fuller et al

7

McPherson et al

—  
Brief

for Plaintiff in Error

Filed April 14. 1863

L. Deland Clerk

# SUPREME COURT.

THIRD GRAND DIVISION, APRIL TERM, 1863.

HERNANDO A. FULLER et. al.,  
*Plaintiffs in Error,*

vs.

SAMUEL H. McPHERRAN, et. al.,  
*Defendants in Error.*

ERROR TO STEPHENSON.

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F. C. INGALLS,

For Plaintiffs in Error.

79

Fuller et al

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McPherson et al

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Brief

for Plaintiff in Error

Filed April 14, 1863

Leland CMC

# SUPREME COURT.

THIRD GRAND DIVISION, APRIL TERM, 1863.

HERNANDO A. FULLER et. al.,  
*Plaintiffs in Error,*

vs.

SAMUEL H. McPHERRAN, et. al.,  
*Defendants in Error.*

ERROR TO STEPHENSON.

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### 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.

79-19

by  
Fuller et al

vs

McPherson et al

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Brief  
for Plaintiffs in Error

Filed April 14, 1853

L. Seland Clerk

# SUPREME COURT OF ILLINOIS.

THIRD GRAND DIVISION, APRIL TERM, 1863.

HERNANDO A. FULLER and  
ANDREW DEGRAFF,  
*Plaintiffs in Error,*

*vs.*

SAMUEL H. McPHERRAN and  
ANDREW McPHERRAN, for use of  
SAMUEL H. McPHERRAN,  
*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  
5 10th, 1859. Also a precipe, directing the Clerk to issue a writ of attachment  
6 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,  
(35) 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.

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

15 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  
(32) Stephenson Circuit Court, directed to Livingston County, and that no writ  
had been issued to Stephenson County. The plaintiffs below then entered a  
16 cross motion for an order to the Clerk to amend the writ so as to make it  
directed to the Sheriffs of Stephenson and Livingston Counties respectively.

17 Jan. 24th, 1860. The Court granted the motion to amend, and overruled  
(33) the motion to quash the writ, which was excepted to.

The writ of attachment was then amended by the Clerk so as to make it,  
directed to the Sheriffs of *Stephenson* and Livingston Counties *respectively*  
and the Sheriff of Stephenson County wrote a return on the same writ, no  
(35) property found and no service on the defendants—March 24th, 1860.

17 Counsel for the defendants appearing for that purpose, moved the Court to  
18 quash the amended writ, because no writ had issued to Stephenson County,  
and because the writ was irregular and void.

19 April 16th. The Court overruled the motion to quash the amended writ.  
At the same time, on motion of Counsel for the plaintiffs the Court ordered  
(34) an "Alias" writ of attachment to issue in said cause directed to the Sheriff  
of Stephenson County to execute.

20 A writ was accordingly so issued, in the form of an Alias writ, dated June  
13th, 1860, returnable on the first Monday of September, and was returned by  
21 the Sheriff of Stephenson County, June 27th, 1860, no property found, and  
without service on the defendants, they not being found in his county.

(36) No other writ or writs issued in said cause.

22 Sept. 3d. Plaintiffs again filed proof of publication of notice to de-  
24 fendants.

25 Sept. 4th. Default of defendants taken, (they not having appeared or pleaded.)

(36) Sept. 18th. Counsel for defendants appearing for that purpose, moved to quash the Alias writ for the same reasons given in support of the former motions to quash—which motion was overruled by the Court and excepted to.

26 Sept. 19th. A jury was empannelled to assess the plaintiffs' damages.  
27 The jury assessed said damages at \$1,814 54.

28 Sept. 20. Counsel for defendants filed motion to set aside the assessment for the reason that the assessment was greater than the damages proved. Also to arrest the judgment, because no writ issued to the County of Stephenson  
29 when the suit was commenced, and because the writs and each of them were void and should have been quashed.

Sept. 21st. The Court overruled the motions to set aside the assessment and in arrest of judgment, which ruling was excepted to.

30 Jan. 11, 1861. The Court rendered judgment for \$1,814 54, and costs, and ordered special execution to sell the property attached to satisfy the same.

ERRORS ASSIGNED ON THE RECORD.

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 property attached, for want of jurisdiction.

4. The Court erred in not quashing the writ and dismissing the suit, for want of jurisdiction.

F. C. INGALLS,  
For Plaintiffs in Error.

79 - 19

Fuller et al  
v  
McPherran et al  
Abstract

Filed April 22 - 1863  
L. Leland  
Clerk

# SUPREME COURT.

THIRD GRAND DIVISION, APRIL TERM, 1863.

HERNANDO A. FULLER et. al.,  
*Plaintiffs in Error,*

vs.

JOSEPH E. LANGFORD et. al.,  
*Defendants in Error.*

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.

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### 1.

The first writ was not amendable.

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### 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.

Fuller et al

vs

Langford et al

---

Brief

for Plaintiffs in Error

Filed April 14, 1863

L. Leland Clerk

# SUPREME COURT.

THIRD GRAND DIVISION, APRIL TERM, 1863.

HERNANDO A. FULLER et. al.,  
Plaintiffs in Error, }  
vs. } ERROR TO STEPHENSON.  
SAMUEL H. McPHERRAN, et. al.,  
Defendants in Error. }

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For Plaintiffs in Error.

79-19

Fuller et al

<sup>vs</sup>  
Mc Pherran et al

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Brief  
In Plaintiffs in Error

Filed April 14. 1863

L L. Carter CME

Fallon	Samm	Turme
Langford	McPherson	Irwin

delivered the opinion of the Court.

Mr. Chief Justice Caton ~~delivered~~

Here a writ of foreign attachment was issued out of the Circuit Court of Stephenson County, directed to the Sheriff of Livingston County, who levied it upon property of the defendants. No property was found in Stephenson County, and, in fact, no writ was issued to that County, at least, till after a motion was made to quash the writ. We decided in Hinman v. Bushman, 27 Ill., 509. That, without a service in the County where the writ issued, the court acquired no jurisdiction. The motion to quash should have been sustained.

The judgments must be reversed.

~~The whole Court concurred~~

Judgments reversed.

78-18-4

Fuller 79-19-5

u

Sayford 80-20-6

Same

u

McPherson

x

Same

u

Irwin

Operson

Catow

OK

Record Book 13

p/2 17

# 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 precipe, 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  
18 cross motion for an order to the Clerk to amend the writ so as to make it  
directed to the Sheriffs of Stephenson and Livingston Counties respectively.

19 Jan. 24th, 1860. The Court granted the motion to amend, and overruled  
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The writ of attachment was then amended by the Clerk so as to make it,  
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property found and no service on the defendants—March 24th, 1860.

19 Counsel for the defendants appearing for that purpose, moved the Court to  
20 quash the amended writ, because no writ had issued to Stephenson County,  
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21 April 16th. The Court overruled the motion to quash the amended writ.  
At the same time, on motion of Counsel for the plaintiffs the Court ordered  
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(38) No other writ or writs issued in said cause.

24 Sept. 3d. Plaintiffs again filed proof of publication of notice to de-  
25 fendants.

28 Sept. 4th. Default of defendants taken, (they not having appeared or pleaded.)

(38) Sept. 18th. Counsel for defendants appearing for that purpose, moved to quash the Alias writ for the same reasons given in support of the former motions to quash—which motion was overruled by the Court and excepted to.

29 Sept. 19th. A jury was empanelled to assess the plaintiffs' damages. The jury assessed said damages at \$7,443 49.

30 Sept. 20. Counsel for defendants filed motion to set aside the assessment for the reason that the assessment was greater than the damages proved. Also  
31 to arrest the judgment, because no writ issued to the County of Stephenson when the suit was commenced, and because the writs and each of them were void and should have been quashed.

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.

ERRORS ASSIGNED ON THE RECORD.

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 property attached, for want of jurisdiction.

4. The Court erred in not quashing the writ and dismissing the suit, for want of jurisdiction.

F. C. INGALLS,  
For Plaintiffs in Error.

Fuller et al

"

Langford et al

Abstract

Filed April 22. 1863

G. Leland

Clerk

United States of America  
State of Illinois  
County of Stephenson

Plea before the Honorable  
Benjamin R. Sheldon Judge of the  
Fourteenth 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 AD 1859

Present Hon Benjamin R. Sheldon Judge  
W D Meacham State Attorney  
C H Yaggart Sheriff  
J W Guilean Clerk

1  
State of Illinois }  
Stephenson County }  
2 1/2

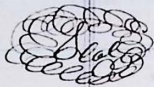
Samuel H McPherson,  
being first duly sworn on his oath deposes  
and says that Fernando A Fuller and  
Andrew De Graff lately doing business under  
the name style & firm of Fuller & De Graff  
are indebted to this deponent Samuel M<sup>c</sup>  
Pherson & Andrew McPherson now for  
the use of this deponent in the sum of  
twenty three hundred dollars and that the  
nature of said indebtedness is as follows,  
viz: thirteen hundred dollars of the same  
is for grading & masonry done by this de-  
ponent and said Andrew McPherson  
upon the Racine & Mississippi Railroad  
in said County and State under and by  
virtue of a certain contract made and  
concluded on the 9<sup>th</sup> day of June A.D.  
1856 by & between this deponent and said  
Andrew McPherson of the one part &  
said Fuller & said De Graff under the name  
& style of Fuller & De Graff of the other part,  
and one thousand dollars of the said in-  
debtedness is for interest upon the aforesaid  
sum of thirteen hundred dollars and for  
damages in account of a breach of said  
contract made and suffered on the part

2 of said Fuller & de Graff and this document  
further says that said Hernandez A Fuller  
& said Andrew de Graff are not either of them  
residents of the State of Illinois

Subscribed & sworn to before  
me a Notary Public for Buck-  
eye Township in said County  
& State as witness my hand & nota-  
rial seal this 9<sup>th</sup> day of August  
AD 1859.

Samuel H. McPherson

Benj<sup>n</sup>. Doornblaser  
Notary Public



Filed Aug 10. 1859  
J. W. Giteau Clk  
By Thos North Dep

Know all men by these Presents, That we Samuel A McPherson as principal, & John Sager, William Kreamer & William W. Robey are held and firmly bound unto Heron and A Fuller & Andrew De Graff in the penal sum of Fifty Six Hundred 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 9<sup>th</sup> day of August A D 1859. The condition of this obligation is such that whereas the above bounden Samuel McPherson has on the day of the date hereof, prayed an attachment out of the Circuit Court of Stephenson County in the State of Illinois at the suit of Samuel McPherson & Andrew McPherson for use of Samuel McPherson against the estate of the above named Heron and A Fuller & Andrew De Graff late firm of Fuller & De Graff, for the sum of Twenty three hundred 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

4 said Samuel M'Pherson & Andrew M'Pherson shall prosecute their suit with effect, or in the case of failure therein, shall well and truly pay and satisfy the said Hernandez & Fuller & Andrew de Gropff all such costs in said suit and such damages as shall be awarded against the said Samuel M'Pherson & Andrew M'Pherson 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.

Witnesses Present  
 J. W. Brawley

Samuel H. M'Pherson  
 John Sager  
 William Kearner  
 William W. Robey

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

5<sup>th</sup>

Samuel H McPherran &  
Andrew McPherran  
for the use of  
Samuel H McPherran  
70

Cir Court  
of Ste Co Ills  
Sept Term 1859

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

In Attachment

Am't of debt of  
Sum to \$2300.00

Clerk with pleasure a  
Writ of attachment in this case directed  
to the Sheriff of Livingston County  
in the State of Illinois returnable  
according to law.

Smith & Pringley

To LW Guitman Esq  
Clerk Cir Court  
of Ste Co Ills.

Filed Aug 10. 1859  
LW Guitman Clerk  
By Thos North Def

6 State of Illinois }  
Stephenson County }  
Livingston County }

The People of the State  
of Illinois to the Sheriff respectively of Stephenson  
& Livingston Counties respectively, Greeting;  
Whereas Samuel H McPherran hath com-  
plained on oath to Luther W Guitau Clerk of  
the Circuit Court of Stephenson County in the  
State of Illinois that Hernando A Fuller &  
Andrew De Graff lately doing business as  
Fuller & De Graff is jointly indebted to Sam-  
uel McPherran & Andrew McPherran who  
sues for the use of Samuel H McPherran in  
the sum of Twenty Three Hundred Dollars  
and oath having been also made that  
the said Hernando A Fuller & Andrew De  
Graff are not residents of the State of Illinois  
And the said Samuel H McPherran having  
given bond and security according to the  
directions in the act on 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 Hernando A Fuller & Andrew  
De Graff to be found in your respective  
Counties as shall be of value sufficient  
to satisfy the said debt and costs, ac-  
cording to the said complaint; and such

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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 Mon-  
 day of September next; so as to compel  
 the said Hernandez A Fuller & Andrew McGoff  
 to appear and answer the complaint of  
 the said Samuel H McPherson & Andrew  
 McPherson for use of Samuel H McPherson  
 and that you also respectively summon  
 as aforesaid to be and appear  
 before the said Court on the said first  
 Monday of September next, then and there  
 to answer what may be objected against  
 him; 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.

Witness Luther W. Guitman, Clerk  
 of our said Court and the Seal  
 thereof at Freeport this 10<sup>th</sup> day  
 of August in the year of  
 Our Lord One Thousand Eight  
 Hundred and fifty-nine.  
 L. W. Guitman 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 defendants Fernando 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 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

9

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 nine (29) 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 3<sup>rd</sup> 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) 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 3<sup>rd</sup> principal meridian and all of section No nine (9) in township No twenty five (25) North of Range 8 East of the 3<sup>rd</sup> principal meridian and all of section No thirty (30) in

10 Township No Twenty Seven (27) North of  
Range 8 East of the 3<sup>d</sup> principal merid-  
ian being in all six thousand one hundred  
and ninety three &  $\frac{14}{100}$  acres, all being in  
the County of Livingston in the State of  
Illinois - The within named Defendants  
Bernardo A Fuller and Andrew De Groot  
not found in my county -

Dated Pontiac Livingston County Ills  
August Eleventh (11) AD 1859,

William J. Russell  
Sheriff of Livingston County  
By E. K. Maples Deputy

Sheriff fees - Levy	.50
Certificate recording	1.00
Return	<u>.10</u>
	1.60

Fees paid by Plaintiff Atty

I can find no property belonging to the  
Within named Defendants on which to levy  
in my County. The within named defend-  
ants not found in my county this 24<sup>th</sup>  
day of March AD 1860

W. J. Fay  
Shff Stephenson County

Fees Return 10 cts

And afterwards to wit on the 24<sup>th</sup> day of September 1859, it being one of the days of the September Term A.D. 1859 of the Stephenson County Circuit Court, the following entry appears of record to wit

Samuel H McPherson &  
Andrew McPherson for  
use of Samuel H McPherson  
7A

Attachment

Hernando A Fuller &  
Andrew Le Gruff lately  
doing business as Fuller & Le Gruff

Now come said Plaintiff by their attys & file their declaration in this suit

And afterwards to wit on the 17<sup>th</sup> day of December 1859 it being one of the days of the December Term A.D. 1859 of the Stephenson County Circuit Court, the following entry appears of record to wit

Samuel H McPherson &  
Andrew McPherson for  
the use of Samuel H McPherson  
7B

Attachment

Hernando A Fuller & Andrew Le Gruff  
lately doing business as Fuller & Le Gruff

12 Now on this day comes said Plaintiff by Smith & Brawley their attorneys, and make and file proof of publication of notice to defend ants.

### Attachment Notice.

State of Illinois }  
Stephenson County }  
In the Circuit Court of Said  
County of the December Term AD 1859

Samuel H McPherson &  
Andrew McPherson for  
the use of Samuel H. McPherson

}  
}  
}  
} Attachment

Hernando A Fuller & Andrew de Graff  
lately doing business under the name  
style and firm of Fuller & de Graff

Public notice is hereby given  
to the said Hernando A Fuller and Andrew de  
Graff 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 10<sup>th</sup> day of August AD 1859. at  
the suit of the said Samuel H McPherson  
and Andrew McPherson for the use of  
Samuel H McPherson, and against the  
estate of the said Hernando A Fuller and  
Andrew de Graff for the sum of twenty-  
three hundred dollars directed to the Sheriff

of Tazewell County, in the State of Illinois, to execute, which said work has been returned executed, and that the same is pending before the said Circuit Court of Stephenson County. Now therefore unless you the said Hernando A. Fuller and Andrew De Gruff 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 A.D. 1859, give special bail and plead to the said Plaintiff's action Judgment will be rendered against you, and in favor of the said Samuel H. McPherson and Andrew M. Pherran for the use of Samuel H. McPherson, 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.

S. W. Guitman Clerk  
Smith & Brawley, Plff's Attys.

J. W. Giles one of the Publishers of the Freeport Weekly Bulletin a newspaper published in the City of Freeport County of Stephenson

14 and State of Illinois, do hereby certify  
that the aforesaid Attachment Notice has been  
published for four successive weeks in  
said Newspaper; the first insertion being  
on the 6<sup>th</sup> day of October AD 1859, and  
the last on the 27<sup>th</sup> day of October  
AD 1859, for which we charge \$5.78  
W. J. Giles

Filed Dec 7. 1859

J. M. Gorman clk

And afterwards to wit on the 9<sup>th</sup> day of December  
1859 it being one of the days of the Term  
per Term AD 1859 of the Stephenson County  
Circuit Court the following entry appears  
of record to wit:

Samuel H McPherson &	}	Attachments
Andrew McPherson for use of Samuel H McPherson		
vs		
Hernando A Fuller &	}	Wareum sicut
David Lee Grapp		

Defendants by Turner & Ingalls their att.  
Turney and for their motion to Quash  
This writ.





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And afterwards to wit on the 24<sup>th</sup> day of January  
AD 1850 it being one of the days of the December  
Term AD 1850 of the Stephenson County  
Circuit Court the following entry appears  
of record to wit:

Samuel H McPherson et al }  
vs }  
Hernando A Fuller et al }      Attachment

On motion of the  
Plaintiffs by their Attorney leave is given  
to the Clerk to amend the writ issued in this case

And afterwards to wit on the 25<sup>th</sup> day of  
January AD 1850 it being one of the days  
of the December Term 1850 of the Stephenson  
County Circuit Court the following entry  
appears of record to wit:

Samuel H McPherson et al }  
vs }  
Hernando A Fuller et al }      Attachment

Now come  
Defendants by Turner & Ingalls their atty  
and file their motion to Quash the  
amended writ in this cause.

In the Circuit Court of Stephenson  
County Illinois Of the Decem-  
ber Term 1859

Mirzando A Foster x  
Andrew Mc Gruff  
vs

Samuel N M Phelan x  
Andrew M Phelan for an  
of Samuel N M Phelan



And now come the said defend-  
ants by Turner & Ingalls their att ors say and  
prove the Court here that the said amended  
Writ in this cause be quashed for the reasons

1. That no writ has sued out or issued  
to Stephenson County at any time before  
the said writ directed to Swingolan County  
was returned.
2. That the said writ was irregular  
& void, and the amendment does not  
cure the irregularity or make the writ  
valid.
3. That the said amended writ is  
irregular and invalid.
4. That one writ of attachment cannot  
issue to two different counties -

Turner & Ingalls  
Attys for Defts

Filed Jan 25. 1860.  
S W Guiteau, Clk

And afterwards to wit on the 16<sup>th</sup> day of April AD 1860 it being one of the days of the April Term AD 1860 of the Stephenson County Circuit Court, the following entry appears & read to wit,

Samuel A McPherson et al }  
 vs } Attachment  
 Fernando A Fuller et al }

Now came on to be heard the Defendants Motion to Quash this Writ of Attachment, and after arguments of counsel, the Motion is overruled, to which ruling of the Court, the Defendants by their Attorneys, except On motion of the Plaintiff by Smith & Sawley their attorneys, it is ordered that an alias Writ of Attachment issue on this cause. To the Sheriff of this County to execute.

State of Illinois }  
 Stephenson County }

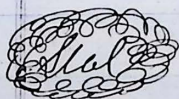
The People of the State of Illinois to the Sheriff of said County, Greeting: Whereas Samuel A McPherson hath complained on oath, to Luther W Guitau Clerk of the Circuit Court of Stephenson

20 County in the State of Illinois, that Hernando  
A Fuller & Andrew De Graff lately doing busi-  
ness as Fuller & De Graff, are jointly in-  
debted to Samuel T M Pheman & Andrew  
M Pheman who sue for the use of  
Samuel T M Pheman in the sum of  
Twenty Three Hundred Dollars and oath  
having been also made that the said Her-  
nando A Fuller & Andrew De Graff are not  
residents of the State of Illinois, And the  
said Samuel T M Pheman having given  
bond and security according to the direction  
in the act in such cases made and provided,  
We therefore, as we have heretofore com-  
mand you that you attach so much of  
the estate, real or personal, of the said  
Hernando A Fuller & Andrew De Graff  
to be found in your County, as shall be  
of value sufficient to satisfy the said  
debt and costs, according to the said  
complaints 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  
the Court House in Freeport within and  
in the County of Stephenson on the first  
Monday of September next; so as to comply

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the said Hernandez A. Fuller & Andrew De  
 Graff to appear and answer the complaint  
 of the said Samuel T. McPherson & Andrew  
 McPherson for use of Samuel T. McPherson  
 and that you do summon a  
 garnisher to be and appear before the said  
 Court on the said day of next, then  
 and then to answer what may be objected  
 against him; when and when you shall  
 make known to the said Court how you  
 have executed this writ. And have you  
 then and then this writ.

Witness Sathu W. Guitman Clerk  
 of our said Court and the Seal  
 thereof at Freeport this 13<sup>th</sup> day  
 of June in the year of our Lord  
 One Thousand Eight Hundred  
 and Sixty.



S. W. Guitman Clerk

I can find no property belonging to the  
 within named defendants in my county -  
 the within named Hernandez A. Fuller  
 & Andrew De Graff not found in my county  
 the 27<sup>th</sup> day of June 1860

C. H. Tappan

Wills Return 10cts

Shff



to the said Hernando A Fuller and Andrew  
 De Graff that Writs of Attachment in the  
 above entitled Cause issued out of the office  
 of the Clerk of the Circuit Court of Stephen-  
 son County Illinois dated August 10<sup>th</sup>  
 AD 1859 and June 13. AD 1860 at the  
 suit of the said Samuel M McPherson  
 and Andrew McPherson for the use of  
 Samuel McPherson and against the  
 estate of the said Hernando A Fuller  
 and Andrew De Graff for the sum of  
 Twenty Three Hundred Dollars, one of  
 said Writs being directed to the Sheriff of  
 said Stephenson County, and one of said  
 Writs being directed to the Sheriff of Law-  
 renson County in the State of Illinois to  
 execute which said Writs have been returned  
 executed and that said attachment is  
 pending before the said Circuit Court of  
 Stephenson County. Now therefore rule  
 you the said Hernando A Fuller and  
 Andrew De Graff 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

24 in the month of September A.D. 1860 give  
special bail and plead to the said plain-  
tiffs action, judgment will be rendered  
against you and in favor of the said  
Samuel H. M. Sherman and Andrew  
M. Sherman for the use of Samuel H.  
M. Sherman, and so much of the prop-  
erty attached, as may be sufficient to  
satisfy the said judgment and cost  
will be sold to satisfy the same.

L. W. Guiteau Clerk

Bright & Beawley

Plaintiffs Attorney

Freeport June 26. 1860.

J. J. R. Seroggs 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 aforesaid Attached  
Notice has been published for four  
successive weeks in said Newspaper  
the first insertion being on the 28<sup>th</sup> day  
of June A.D. 1860 and the last on the  
19<sup>th</sup> day of July A.D. 1860 for which  
we charge \$6. <sup>27</sup>/<sub>100</sub>

September 1. 1860

J. J. R. Seroggs  
Filed Sept 3<sup>rd</sup> 1860 L. W. Guiteau Clerk

And afterward to wit on the 4<sup>th</sup> Day of September AD 1860 it being one of the Days of the September Term AD 1860, of the Stephenson County Circuit Court the following entry appears of record, to wit,

Samuel H McPhenan et al	}	Attachments
for use of Samuel H McPhenan op		
Hernando A Fuller et al		

On motion of said Plaintiffs by Brawley their Attorney the said Defendants having been three times solemnly called came not but made defaults.

And afterwards to wit on the 18<sup>th</sup> Day of September AD 1860 it being one of the Days of the September Term AD 1860 of the Stephenson County Circuit Court, the following entry appears of record to wit,

Samuel H McPhenan &	}	Attachments
Andrew McPhenan for the use of Samuel H McPhenan op		
Hernando A Fuller & Andrew de Graff lately doing business as Fuller & de Graff		

26 Now on this day comes Fred<sup>d</sup> C Ingalls Esq  
and enters his motion to quash the alias writ  
of attachment issued in this cause,  
and the motion is denied, and excepted to -

And afterwards to wit on the 19<sup>th</sup> day of  
September A D 1860 it being one of the  
days of the September Term A D 1860, of  
the Stephenson County Circuit Court the  
following entry appears of record to wit

Samuel H McPherson &  
Andrew McPherson for  
use of Samuel H McPherson  
of

Hernando A Fuller &  
Andrew De Groot vs  
Henry Brewster Fuller & De Groot

Attachment

Now on this day  
came said Plaintiff by Bright P Daudley  
their attorney and also came a jury of twelve  
good and lawful men, to wit, James Shultz  
and eleven others who were severally duly  
sworn to assess the plaintiffs damages,  
and after hearing the evidence adduced,  
the jury retire in charge of an officer to  
consider of their verdict, and after a short  
absence, they return into Court, and say

27

that they assess the Plaintiffs Damages at One Thousand Eight Hundred and Seventeen dollars and fifty four cents, And the said defendants by Ingalls their attorney enter their motion to set aside assessment of damages and in arrest of judgment.

And afterward to wit on the 20<sup>th</sup> day of September A.D. 1860 it being one of the days of the September Term A.D. 1860 of the Stephens County Circuit Court the following entry appears of record to wit:

Samuel H McPherson et al	}	Attachments
<sup>vs</sup>		
Hermando A Fuller et al	}	

Now on this day came said Defendants by Ingalls Esq. their attorney and file their motion and points to assess the damages, and in arrest of judgment in this cause.

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

Hernando A Fuller &  
Andrew De Groff

vs

Samuel W McPherson  
and Andrew McPherson  
Jurat of Samuel W McPherson

And now come the said  
defendants by J. C. Ingalls their attorney  
and move the Court here that the opening  
of damages by the jury in this cause be  
set aside and a new opening added.  
And the said defendants also move the  
Court in arrest of judgment in this  
cause. And the said defendants shew to  
the Court the following reasons in support  
of their said motions to wit,

1. Evidence was given of damages, and  
damages were assessed which were not  
proper to be recovered by the plaintiffs  
under the declaration & proof in this  
cause.

2. The judgment in this cause should  
be annulled because there was no writ  
issued to Stephenson County at the time

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This suit was commenced. And the writs in this cause, and each of them were irregular and void and should have been quashed. And for other reasons apparent on the record in this cause.

J. C. Ingalls  
Atty for Deft

Filed Sept 20. /60

L. W. Guiteau Clk

And afterwards to wit on the 21<sup>st</sup> day of September A.D. 1860 it being one of the days of the September Term A.D. 1860 of the September County Circuit Court, the following entry appears of record to wit

Samuel H. McPherson }  
Andrew M. Pherran for }  
the use of Samuel H. McPherson }  
J. P.

Attachments

Herrando A. Fuller & Andrew }  
De Groff lately doing business }  
as Fuller & De Groff }

Now on this day

came on to be heard the Defendants Motion to set aside the assessment of damages in this cause, and also the motion as a matter of judgment, and after arguments of Counsel

30 the Court being advised in the premises, the motions are severally overruled, and the defendants except.

And afterwards to wit on the 11<sup>th</sup> Day of January A D 1861 it being one of the days of the December Term A D 1860 of the Stephens County Circuit Court, the following entry appears of record to wit:

Samuel H M Phelan &  
Andrew M Phelan for  
the use of Samuel H M Phelan  
V

Herrando A Fuller &  
Andrew De Graff lately  
long business as Fuller & de Graff

Attachment

Now on this day comes said plaintiffs by their attorneys and enter their motion for judgment on the verdict of the jury heretofore found. It is therefore considered and ordered that said Plaintiff have and recover of said defendants the said sum of One Thousand Eight Hundred and fiftteen Dollars and fifty four cents their Damages as by the jury heretofore assessed together with their Costs by them about their suit, in this behalf expended and that the property

attached be sold to satisfy the same, and that he have a special execution for the same. And the said defendants by James Ingalls their attorneys except to the overruling of the motion in arrest of judgment.

And afterwards to-wit on the 14<sup>th</sup> day of January AD 1861 being one of the days of the December Term AD 1860 of the Stephens County Circuit Court the following entry appears of record to-wit

Samuel H McPherson et al	}	Attachments
vs		
Hernando A Fuller et al	}	

Now on this day came said defendants 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

Hernando A Fuller &  
Andrew De Graff  
vs

Samuel H McPherson &  
Andrew McPherson for  
use of Samuel H McPherson

Be it remembered  
that on the ninth day of December 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 the cause  
for the reason that said writ was sued and  
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 Court directed to Stephenson  
County. And afterwards 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 & Livingston Counties respectively,  
 And afterwards on the twenty fourth day of  
 January AD 1856 it being one of the days  
 of the said December Term AD 1855 of said  
 Court came on to be heard by the Court the  
 said motions, And the Court thereupon al-  
 lowed said plaintiffs cross motion to amend  
 said writ which was accordingly amended  
 by the Clerk & afterwards overruled the said  
 defendants motion to quash said writ.  
 To which ruling of the Court in overruling  
 said defendants motion to quash said  
 writ, and in allowing said plaintiffs  
 motion to amend the same the said de-  
 fendants 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 Stephe-  
son & were inserted before the word  
 "Livingston", and the word respectively  
 inserted before the word "Greeting" and  
 the letter s added to the words "Sheriff"  
 and "county" - in the direction of the  
 writ making it read, "The People of the  
 State of Illinois to the Sheriffs respectively  
of Stephenson & of Livingston Counties  
respectively Greeting &c The word  
respectively was inserted between the words

"you" and "that," and between the words "you" and "attach" making it read "We therefore command you respectively that you respectively attach so 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 County &c" The word respectively was inserted between the words "also" and "summon" making the writ read, "and that you also respectively & summarize" 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 when you respectively shall make known to the said Court how you respectively have executed this writ.

And have you respectively then and then this writ &c And afterwards on the 25<sup>th</sup> day of January A D 1860 it being one of the days of the December 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 irregular and void.

Which said motion came on 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 overruled 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 did then and there except. 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 into said Court executed by levying on real estate of defendant Fuller, and without service on said defendants that they were not found in this county, on the eleventh day of August A D 1859. After the writ was amended as aforesaid, the Sheriff of Stephenson County without the sanction of the Court wrote out the following return no property found and without service on said defendants March 24<sup>th</sup> A D 1860. And no other writ has then issued to Stephenson County.

36 And afterwards to wit on the sixteenth day of April AD 1860 it being one of the days of the April Term AD 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 motion was on said day granted by the Court; and an alias writ issued out of said court on the 13<sup>th</sup> 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, that they were not found in this County, and no other writ or writs issued in said cause.

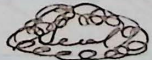
And afterwards to wit, on the Eighteenth day of September AD 1860 it being one of the days of the September Term AD 1860 of said Court the said defendants filed their motion to quash the alias writs of attachment on said Cause, for the reason that no writ of attachment had issued to Stephenson County 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  
 13<sup>th</sup> 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 to quash said alias writ the said  
 defendants by their Counsel did then and  
 then except. And afterwards to  
 wit, on the nineteenth day of September  
 AD 1860 it being one 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 thereupon assessed the said  
 damages at the sum of One Thousand  
 eight hundred and fifteen dollars and  
 fifty four cents. And afterwards to wit  
 on the 20<sup>th</sup> day of September AD 1860 it  
 being yet of the said September Term  
 AD 1860 of said Court, said defendant  
 by their Counsel filed their motion in  
 arrest of judgment in said cause, for  
 the reason that no writ issued to Stephen-  
 son 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 apparent on the record.

And afterwards on the twenty first day of September AD 1860 it being one of the days of the September Term AD 1860 of said Court the Court overruled the motion of said defendants in arrest of judgment and afterwards to wit on the eleventh day of January AD 1861, it being one of the days of the December Term AD 1860 of said Court, the said Court rendered judgment in favor of said plaintiffs and against said defendants for the said sum of One Thousand Eight Hundred and fifteen dollars and fifty four cents, and costs of suit, and awarded a special execution to sell the property attached, to which ruling of the Court in overruling the 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 there except and pray that this their Bill of Exceptions may be signed and sealed by the Court which is done.

Benj. R. Sheldon



39 Filed Jan 14. 1861

J. W. Shaffer Clerk

for E. W. Guiteau Def.

And afterwards on the 19<sup>th</sup> day of March A.D.  
1863. the following Receipt was filed in  
said cause, to wit:

Stephenson County Circuit Court.

Bernardo A. Fuller

+ Andrew DeGraff

vs

Samuel H. McPherson

+ Andrew McPherson, for use

of Samuel H. McPherson.

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:

1. The declaration in said cause
2. The execution of fee bill issued in said cause
3. The bill of costs in said cause.

Fred. C. Ingalls

Atty for Defs

State of Illinois }  
Stephenson County } J. W. Shaffer

J. J. Wilson Shaffer, Clerk  
of the Circuit Court in and for said County

do hereby certify that the foregoing is a full and complete copy transcript of the Records, and of the papers on file in said above entitled cause as appears from the Records and files in my office. Except the Declaration Execution & Fee bill.

In Testimony whereof I have hereunto set my hand and the seal of said Court at Freeport, in said County, this 19<sup>th</sup> day of March A.D. 1863.

J. W. Shaffer Clerk  
per E. P. Hodges. Dep



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

Hernando A. Fuller & Andrew DeGruff  
Plaintiffs in Error

<sup>vs</sup>  
Samuel H. McPherran &  
Andrew McPherran for use of  
Samuel H. McPherran  
Defendants in Error

And now come the said  
Hernando A. Fuller and Andrew DeGruff  
by Jas<sup>d</sup> C Ingalls their Attorney and say that in  
the record and proceedings aforesaid there is  
error, in this, to wit

- 1 The Court erred in overruling the motions of the  
defendants in the Court below, and each of them  
to quash the writ
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 property  
attached, for want of jurisdiction
- 4 The Court erred in not quashing the writ and  
dismissing the writ, for want of jurisdiction

And the said Hernando A.

Fuller and Andrew DeGraff pray that the  
judgment aforesaid, for the errors aforesaid, may  
be reversed &c

And C. Ingalls  
Attys for Pltfs in Error

79-19

Fuller et al

<sup>vs</sup>  
McPherran et al

Record

Filed April 14, 1863

L. Selman  
clerk.

State of Illinois  
LaSalle county 3<sup>rd</sup>

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.  
Samuel H. McPherran and Andrew McPherran, for use of Samuel H. McPherran,  
Defendants in Error.

Error to Stephenson County Circuit Court.

Whereas, the said Hernando A. Fuller and Andrew De Graff have sued out a writ of error from said Supreme Court, to reverse a judgment obtained by said Samuel H. McPherran and Andrew McPherran, for the use of Samuel H. McPherran, 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 Samuel H. McPherran, one of the said defendants in error, is a non-resident of this State, and resides at Spruce Creek, in the State of Pennsylvania.

Now, therefore, you, the said Samuel H. McPherran, the said defendant in error, whose non-residence appears as aforesaid, are hereby notified to be and appear before the justices of said Supreme 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 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 receive 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 Plffs in Error.

This certifies, that the annexed notice in the case of *Hernando A. Fuller and Andrew De Graff vs. Samuel H. McPherran, &c.* was published four weeks successfully in the *Ottawa Free Trader*, a weekly newspaper published at Ottawa, La Salle county and State of Illinois, commencing with the No of said paper dated February 14th, A.D. 1863, and ending with the No dated March 7th, A.D. 1863; also, that on or about the 14th day of February, A.D. 1863, I mailed a copy of said paper, containing the annexed notice, marked with a pen so as to call attention to it, to postage prepaid, and directed "To Samuel H. McPherran, Spruce Creek, Pa."

Wm Osman,  
Publisher.

State of Illinois }  
County of LaSalle }

William Osman being first duly sworn on oath says that the foregoing certificate is true  
Subscribed & sworn before me  
this 21<sup>st</sup> day of April 1863

L. Leland Clerk  
J. P. Rice Deputy



79-19

Fuller

<sup>u</sup>  
Mc Pherran

Proof Pub. notice  
to non resident

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

Meraando A. Fuller &  
Andrew De Graff  
Plaintiffs in Error

<sup>21</sup> Samuel H. McPherran & <sup>Error</sup>  
Andrew McPherran, for to the pherran  
use of Samuel H. McPherran  
Defendants in Error

State of Illinois }  
Stephenson County }  
Frederic C. Ingalls  
of said County, being  
first duly sworn says that he is counsel  
for the Plaintiffs in Error in the above  
Entitled cause, That Samuel H.  
McPherran one of the said defendants  
in Error is a non resident of this state  
and resides as this affiant is informed  
at Spruce Creek, in the State of  
Pennsylvania

Subscribed & sworn to }  
before me this 27<sup>th</sup> day of }  
January 1863 }  
W. Shaffer, Clerk of Circuit Court }  
of said County }  
By E. P. Hodges, Dep.

Frederic C. Ingalls

79-19

Hernando A. Fuller

et al

vs

Samuel H. McPherran

et al

Affidavit of nonresidence

Filed July 28, 1863.  
L. Island  
Ck.

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

Hernando A Fuller  
& Andrew De Groff  
Plaintiffs in Error

} Error to Stephenson

<sup>m</sup>  
Samuel H. McPherran  
& Andrew McPherran  
for use of Samuel H. McPherran  
Defendants in Error

The Clerk will please  
issue Writ in the above entitled case  
for service on the above named defendants  
in error, (being plaintiffs in the Court below)  
directed to the Sheriff of Stephenson County to  
execute

Fred. C. Ingalls  
Atty for ~~Def~~ Piffs in Error

79 - 19

Fuller et al

vs

McPherson et al

Receipt for writ

Filed September 10<sup>th</sup> 1882  
L. Leland  
Clk

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 judgments of a plea which was in the Circuit Court of Stephenson County, before the Judge thereof, between Samuel McPherson & Andrew McPherson for use of Samuel McPherson

plaintiffs, and Hernando A. Gullu & 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 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

Samuel McPherson and Andrew McPherson

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 Samuel McPherson and Andrew McPherson

notice, together with this writ.

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

L. Leland

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



79 - 19

Hermando A. Fuller and

Andrew D. Graff

No. vs.

Samuel H. McPherson and  
Andrew McPherson for use of  
Samuel H. McPherson

SCIRE FACIAS.



FILED... Jan 7 28... A. D. 1863.

L. Deland Clerk.

The within named Samuel  
H. McPherson and  
Andrew McPherson  
not found in my  
County, this 1<sup>st</sup>  
day of December AD  
1862

W. H. Mayers  
Sheriff of Stephenson  
County Illinois

STATE OF ILLINOIS,  
SUPREME COURT

} ss. The People of the State of Illinois,

To the Sheriff of McCluside Sec - County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgments of a plea which was in the Quia in  
Court of McCluside County, before the Judge thereof, between  
Samuel H. McPherran, and Andrew Mc  
Pherran for use of Samuel H. McPherran

plaintiffs..., and Fernando 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 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

Samuel H. McPherran and Andrew McPherran

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 Samuel H. McPherran

Andrew McPherran

notice, together with this writ.

Witness, The Hon. John T. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 3<sup>rd</sup> day of February in the year of our Lord One Thousand Eight Hundred and Fifty-Three



L. Island  
Clerk of the Supreme Court.

29-19

Fuller & Co.

No. 18

vs. McPherran et al

SCIRE FACIAS.

FILED... Feb 14 1863

A. Deland Clerk.

Amount 520  
Fees 10  
Returns 10  
Salage 79

State of Illinois  
County of Lee

I certify that I have served  
the within writ, by reading the same to the within  
named Andrew McPherran, on the twentieth  
day of February, AD 1863  
The within named Samuel H. McPherran not found  
in my county, dated February 20th AD 1863

Charles H. Lyman  
Sheriff of Lee County, Ills.

