

No. 14638

Supreme Court of Illinois

Miles et al

vs.

Goodwin et al

71641  7

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 30

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

OWEN E. MILES,
BRADFORD S. MILES,
vs.
JEREMIAH & NEWTON GOODWIN,

Error from Court of Common Pleas of the City of Aurora.

BRIEF FOR DEFENDANT'S IN ERROR.

There is no error in overruling the motion to dismiss the suit on account of the defect in the writ. X
Sec. 8 of the Statute in relation to Attachments, (Ills. Statutes, page 229,) provides that no Writ of Attachment shall be quashed on account of any insufficiency thereof, if the Plaintiff shall cause the Writ to be amended.

This Section requires Courts to allow all defects to Writs, Bonds, Affidavits, &c., in Attachment cases to be amended, and discountenances objections which do not go to the merits, but are technical; and as the Plaintiff's below moved the Court to amend in the particular objected to, the Court did right in overruling the motion to dismiss and in allowing the Writ to be amended. 15 Ill. 266.

*The 1st count of the declaration is good - and there was
no error in overruling the demurrer thereto*

The Plaintiff's in error cannot complain that the Defendant's in error alleged and proved, that the Note while dated January 2nd, 1860, should have been dated January 1st, 1861, because it was against the interests of the latter and benefited the former. A party cannot take advantage of an error which makes to his advantage.

In fact, however, no error in this particular occurred. *but if there were error
the defendants by their default were out of court and
have no right to except to testimony*
Morton vs Bailey et al 1 Scam 213

The cases referred to (to wit, 27 Ills. 152, 14 Ills. 359, and 16 Ills. 27,) in the Brief by Attorney for Plaintiff's in error, have no application to this case. They decide that in a Chancery case against a non-resident, in addition to proof of publication of notice, there must be a return of the officer on the summons that the Defendant was not found. But however irregular the proceedings as to bringing Bradford S. Miles in Court by publication may have been, his appearance entered by himself in the cause afterwards, cures all errors. He is in Court, and having entered his appearance, he cannot object to proceedings, having for their object, simply to get him in Court.

23 Ills 88. 17 Ills 235. 25 Ills 107. 28 Ills 79

Owen E. Miles, both by service and appearance, being in Court, and Bradford S. Miles, by voluntarily coming in Court on the 25th day of March, 1862, and entering his appearance, and making motions, and taking steps in the cause, cannot be permitted to object for want of jurisdiction in the Court over them.

*B. S. Miles' appearance was general - not
limited to a particular purpose - Record pages 21, 23, 29
see cases above -*

The property attached, was situated within the City of Aurora, that is, within the jurisdiction of the Court, and by the amendment of the writ and return, the proceedings became regular and legal, and the property subject to the seizure on the writ.

Record pages 24 to 29

The objections in this case are merely technical, the merits are all with the Defendant's in error, who have already been kept out of a just debt several years by legal Chicanery. It is therefore the duty of the Court to sustain the decisions of the Court below, unless there is clearly error in its determination.

X The motion of C. E. Miles to dismiss the writ was not (as they atty for Plffs in Error states) because the writ did not by its terms confine the officer in the execution of the writ to the city limits - but was because of an alleged variance between the writ and declaration - Record pages 13 & 16 as there was no variance the motion was properly overruled -

Fail Ital vs Drattitts Breen 156
new edition 201

The attachment Bond - writ & return of the officer under the leave of the court were so amended as to be unobjectionable

Record pages 24 to 29

S. Milroy
att'y for defts in Error

No 30

S. Goodman Adal

ats

O. E. Miles Adal

Points & Argument of
S. Miles for debts in Exec

Filed Apr 20. 1864

J. Selander Clerk

Supreme Court of the State of Illinois,
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

OREN E. MILES AND BRADFORD S. MILES	}	Attachment.
vs		
JEREMIAH GOODWIN & NEWTON GOODWIN		

Page of
Record.
2

Affidavit for attachment filed June 17th, 1861. Affidavit states that defendants Oren E. and Bradford C. Miles are indebted unto the plaintiffs in a sum of money exceeding \$20 00 to-wit \$404 82-100, on a promissory note executed the 1st day of January, 1860, for \$387 07, and due the 1st day of April, after date, with interest at ten per cent per annum, and that Bradford S. Miles is not a resident of this State.

- 3 June 17th, 1861. Attachment bond filed signed by the plaintiffs and Hiram Goodwin as surety, for nine hundred dollars, running to Oren E. and Bradford S. Miles, reciting that a writ of attachment has been sued out of the Office of the Clerk of the Court of Common Pleas against the estate of Bradford S. Miles, for the
- 4 sum of \$404 82-100, and conditioned that said plaintiff prosecute their suit with effect, or in case of failure therein, shall well and
- 5 truly pay, or cause to be paid, and satisfy the said Miles his heirs executors or administrators, in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment.

- 6 June 17th, 1861. Attachment writ issued directed to the Sheriff of Kane County, against the estate of Bradford S. Miles to be found in his County, and directing the Sheriff to summons the
- 7 defendants if found within his County, which writ is returned by the Officer and executed by attaching the real estate of Bradford S. Miles, and reading the same to Oren E. Miles, Bradford S. Miles not found in the County. Writ filed in the Office of the Clerk, October 21st, 1861.

8 October 9th, 1861. Declaration filed, containing one special and the common counts, the special count avers that the defendants on the 1st day of January, A. D. 1861, at Aurora, to-wit: at the City of Aurora, made a certain note in writing, commonly called a promissory note bearing date by mistake on the 2st day of January, A. D. 1860, whereas in truth and in fact, the said was at the time of the making thereof, meant intended and understood by the said plaintiffs and said defendants, on the 1st day of January, A. D. 1861, and then and there delivered said note, &c.

13 October 21st, 1861. Motion of Orni E. Miles, to dismiss suit.

14 Plaintiff makes proof as to Bradford S. Miles, of publication by filing the following notice and and publishers certificate. Jeremiah Goodwin and Norton Goodwin vs. Oren E. Miles and Bradford S. Miles. Public notice is hereby given to said Bradford S. Miles that a writ of attachment issued out of the Office of the Clerk of the Court of Common Pleas of the City of Aurora, dated the 17th day of June, A. D. 1861, at the suit of said plaintiffs and against the estate of the said Bradford S. Miles for the sum of \$404 82-100 directed to the Sheriff of Kane County, which said writ has been returned executed. Now, therefore, &c., which notice is dated September 3d, 1861.

15 Publishers certificate stating that the notice was duly published in the issues of Sept. 5th, 12th, 19th and 26th, A. D. 1861, in the Aurora Beacon, which notice and certificate, were filed October 21st, 1861, and refiled March 24th 1862.

16 Oren E. Miles' motion to dismiss overruled. Judgment entered by default against Bradford S. Miles.

October 22d, 1861. General demurrer by Oren E. Miles to plaintiff's declaration and each and every count thereof.

Default as to Bradford S. Miles set aside on motion of plaintiff.

18 Plaintiffs join in demurrer of Oren E. Miles, demurrer overruled as to first count of declaration and sustained as to the balance of the counts.

Plaintiffs take leave to amend declaration.

March 24th, 1862. Default against Bradford S. Miles and judgment.

20 Rule on Oren E. Miles to plead instanter.

Default against Orrin E. Miles.

March 25th, judgment for \$434 90-100. Afterwards Bradford S. Miles enters his appearance and moves to set aside proceeding for irregularities; Court takes motion under advisement.

22 Motion sustained; leave given to plaintiffs to file amended bond and also file declaration as amended.

23 June term, A. D. 1862. June 16th, motion to dismiss suit as to Bradford S. Miles; Court to take motion under advisement.

24 June 25th, 1861. Motion by plaintiffs to amend bond and writ of attachment, return of Sheriff; granted by the Court.

29 June 26th, amended bond filed by plaintiffs, also return of summons as amended by Sheriff, as follows: "I hereby certify that I served the within writ by reading the same, upon the within named Oren E. Miles, on the 17th day of June, A. D. 1861, in the City of Aurora, and attached on the 17th day of June, A. D. 1861, lots 8, 9, and 10, in plot 4, in Hall's addition to West Aurora, June 26th, 1862; filed October 21st, 1861; refiled June 27th, 1862.

30— Motion to dismiss as to Bradford S. Miles, overruled. B. S. Miles excepts to the ruling of the Court in overruling said motion, and allowing plaintiffs to amend bond and return of writ of attachment.

31— Plaintiffs enter their motion for default and that the Court assess damages. The Court assesses plaintiff's damages at \$440 00 Judgment for the amount and costs.

32— Motion by defendant Bradford S. Miles to vacate judgment; motion overruled—defendant Bradford S. Miles excepts to the ruling of the Court.

33— Bill of Exceptions—L. R. Wagner, sworn for plaintiffs, who testifies as follows: "I had a conversation with Oren E. Miles, about this note, he stated to me that the note was in fact executed one year after its date," the plaintiffs then introduced the note in evidence as follows:

\$387 07.

West Aurora, Jan. 1st, 1860.

"First day of April after date, we jointly and severally promise to pay to the order of J. Goodwin & Co., three hundred and eighty-seven and 07-100 dollars, at ten per cent interest, for value rec'd.

O. E. Miles,
B. S. Miles.

This being all the evidence introduced in the cause, the bill of Exception was then and there signed, &c.

The Errors assigned are :

1st. The Court erred in not allowing O. E. Miles motion to dismiss suit.

2d. The Court erred in not sustaining the demurrer to the first count in the declaration.

3d. The Court erred in not allowing Bradford S. Miles motion to vacate all of the proceedings in whole, but only in part.

4th. The Court erred in not allowing Bradford S. Miles' motion to dismiss the case, as to him.

5th. The Court erred in allowing plaintiff to amend bond and return on writ.

6th. The Court erred in allowing judgment by default against Bradford S. Miles.

7th. The Court erred in rendering judgment against Bradford S. Miles, because it had no jurisdiction over him.

8th. The Court erred in hearing the evidence in the case without a jury to assess damages.

S. Miller & al
J. Goodwin & al

Filed Apr 21, 1867
S. Leland
Me

Supreme Court of Illinois,

THIRD GRAND DIVISION.

APRIL TERM, A. D. 1863.

ORIN E. MILES AND
BRADFORD S. MILES,

vs.

JEREMIAH GOODWIN AND
NEWTON GOODWIN.

POINTS AND BRIEF FOR PLAINTIFFS IN ERROR.

The first error assigned is, that the Court below erred in not allowing the motion of Orin E. Miles to dismiss the suit, because the writ did not, by its terms, confine the officer, in the execution of the writ, to the city limits.

Phy v. Coval, 26th Ill., p.

Also, 27th Ill., p. 509.

The demurrer to the first count ought to have been sustained, because it is uncertain in what respect the parties *intended* said note, on the 1st day of January, A. D. 1861,—to have it dated on that day or otherwise.

On the 3d error assigned, we claim that the entire proceedings ought to have been vacated; 1st, because the *writ was void*, and hence all the subsequent proceedings, and

2d, the service by publication was unauthorized and void. Our statute provides—"On the return of any writ of attachment against a defendant, it shall be the duty of the Clerk to give, for four weeks successively," &c.

Blackwell's Statute, p. 281.

The writ was not returned to the office of the Clerk by the officer, till October 25th, 1861; and then, it seems, that he served the writ on Orin E. Miles

on the day it was issued, but did retain possession of the writ in some way till June 26th, 1862, when, on the following day, it was re-filed in the office of the Clerk of the Court.

The summons must have been returned before publication notice, otherwise the Court acquires no jurisdiction over the person of the defendant.

27th Ill., 152.

14 " 359.

16 " 27.

The statutory proceedings for acquiring jurisdiction of absent defendants must be strictly complied with. Jurisdiction can only be acquired in the mode prescribed by statute.

Cook v. Farren, recited in Sup. Court of N. Y., general term, 1st district, February, 1861, and not yet published.

The statute is in derogation of the common law, and must be strictly construed.

On the 4th assignment of error, the point as to the validity of the summons, the service thereof, and the sufficiency of the notice, are involved, which have already been mentioned.

The 6th and 7th assignment of errors involve the same points, and we insist that the Court had no jurisdiction over Bradford S. Miles; 1st, because the writ was void; and it being a void writ, the subsequent service thereof, by publication, was illegal and void. And 2d, that the notice was prematurely published. The date of the notice is Sept. 3d, 1861, while the summons was not returned and filed till October 21st, 1861, and the return as to Bradford S. Miles was not made till Jan., 1862. Nor could the Court acquire jurisdiction over Bradford S. Miles, by the subsequent introduction in evidence of the same notice. See page 19 of Record.

The date of the return is June 26th, 1862, while the notice of publication was published in September and October, 1861.

The date of the return must be taken as the time of service.

27th Ill., p. 364.

And, finally, on the 7th assignment of error, we insist that the Court had no right to hear the evidence in the case, and assess the damages, without a jury. Witnesses were sworn, to prove the time of the execution of the note, and also the signature of the note, which was introduced under the special and common counts in the declaration. The Court may, where the amount rests in computation only, and where the suit is brought on an instrument in writing, refer the matter to the Clerk without a writ of enquiry, and without the assistance of a jury, but in all other cases it must be done by a jury.

Blackwell's Stat., p. 262.

C. J. METZNER,

Attorney for Pltffs. in Error.

30
Miles
or
Cordova
8th

Gileed April 22. 1863
L. Selamie
Mo

RECEIVED M. D.

words of a girl who was

OWEN E. MILES,
BRADFORD S. MILES,
vs.
JEREMIAH & NEWTON GOODWIN,

Error from Court of Common Pleas of the City of Aurora.

BRIEF FOR DEFENDANT'S IN ERROR.

There is no error in overruling the motion to dismiss the suit on account of the defect in the writ. X

Sec. 8 of the Statute in relation to Attachments, (Ills. Statutes, page 229,) provides that no Writ of Attachment shall be quashed on account of any insufficiency thereof, if the Plaintiff shall cause the Writ to be amended.

This Section requires Courts to allow all defects to Writs, Bonds, Affidavits, &c., in Attachment cases to be amended, and discountenances objections which do not go to the merits, but are technical; and as the Plaintiff's below moved the Court to amend in the particular objected to, the Court did right in overruling the motion to dismiss and in allowing the Writ to be amended. 15 Ill. 266.

The 1st Count of the declaration was good and therefore Court properly overruled the demurrer thereto -

The Plaintiff's in error cannot complain that the Defendant's in error alleged and proved, that the Note while dated January 2nd, 1860, should have been dated January 1st, 1861, because it was against the interests of the latter and benefited the former. A party cannot take advantage of an error which makes to his advantage.

In fact, however, no error in this particular occurred. but if there were error the defendants by their default were out of Court and have no right to except to testimony.
Morton vs Barbey Ad 1 Decm 213

The cases referred to (to-wit, 27 Ills. 152. 14 Ills. 359, and 16 Ills. 27,) in the Brief by Attorney for Plaintiff's in error, have no application to this case. They decide that in a Chancery case against a non-resident, in addition to proof of publication of notice, there must be a return of the officer on the summons that the Defendant was not found. But however irregular the proceedings as to bringing Bradford S. Miles in Court by publication may have been, his appearance entered by himself in the cause afterwards, cures all errors. He is in Court, and having entered his appearance, he cannot object to proceedings, having for their object, simply to get him in Court.

23 Ills 88. 17 Ills 235. 25 Ills 107. 28 Ills 79 -

Owen E. Miles, both by service and appearance, being in Court, and Bradford S. Miles, by voluntarily coming in Court on the 25th day of March, 1862, and entering his appearance, and making motions, and taking steps in the cause, cannot be permitted to object for want of jurisdiction in the Court over them. *B. S. Miles' appearance was general and not limited to any particular purpose - Record pages 21. 23. 29*
See cases above -

The property attached, was situated within the City of Aurora, that is, within the jurisdiction of the Court, and by the amendment of the writ and return, the proceedings became regular and legal, and the property subject to the seizure on the writ.

see pages of Record 24 to 29

The objections in this case are merely technical, the merits are all with the Defendant's in error, who have already been kept out of a just debt several years by legal Chicanery. It is therefore the duty of the Court to sustain the decisions of the Court below, unless there is clearly error in its determination.

28 2lls 79

* The motion of O. E. Miles to dismiss the suit was not (as the atty for Plffs in error states) because the writ did not by its terms confine the officer in the execution of the writ to the city limits - but because of an alleged variance between the writ and declaration

Record pages 13 & 16 -

As there was no variance the motion was properly overruled -

Fail Ad as Doottelle Bms 156
new Edition 201

The attachment Bond, writ & return of the officer under the leave of the court were so amended as to be unobjectionable

Record pages 24 to 29

J. Milroy
Atty for depts in error

I. Fosdick & al
 vs
 J. E. Miles & al

Points & argument of
 J. Miles for debts in Euro

Given Apr 20. 1864
 J. Deland etc

the determination of the Court to sustain the decision of the Court before which there is clearly error in who have already been paid out of a fund distributed to them by John O'Connell. It is therefore the duty of the Court to sustain the decision of the Court before which there is clearly error in

Supreme Court of the State of Illinois,
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1862.

OREN E. MILES AND
BRADFORD S. MILES
vs
JEREMIAH GOODWIN &
NEWTON GOODWIN } Attachment.

Page of
Record.
2

Affidavit for attachment filed June 17th, 1861. Affidavit states that defendants Oren E. and Bradford C. Miles are indebted unto the plaintiffs in a sum of money exceeding \$20 00 to-wit \$404 82-100, on a promissory note executed the 1st day of January, 1860, for \$38707, and due the 1st day of April, after date, with interest at ten per cent per annum, and that Bradford S. Miles is not a resident of this State.

3 June 17th, 1861. Attachment bond filed signed by the plaintiffs
and Hiram Goodwin as surety, for nine hundred dollars, running
to Oren E. and Bradford S. Miles, reciting that a writ of attach-
ment has been sued out of the Office of the Clerk of the Court
of Common Pleas against the estate of Bradford S. Miles, for the
4 sum of \$404 82-100, and conditioned that said plaintiff prosecute
their suit with effect, or in case of failure therein, shall well and
5 truly pay, or cause to be paid, and satisfy the said Miles his heirs
executors or administrators, in any suit or suits which may here-
after be brought for wrongfully suing out the said attachment.

6 June 17th, 1861. Attachment writ issued directed to the Sheriff
of Kane County, against the estate of Bradford S. Miles to be
found in his County, and directing the Sheriff to summons the
defendants if found within his County, which writ is returned by
7 the Officer and executed by attaching the real estate of Bradford
S. Miles, and reading the same to Oren E. Miles, Bradford S.
Miles not found in the County. Writ filed in the Office of the
Clerk, October 21st, 1861.

8 October 9th, 1861. Declaration filed, containing one special and the common counts, the special count avers that the defendants on the 1st day of January, A. D. 1861, at Aurora, to-wit: at the City of Aurora, made a certain note in writing, commonly called a promissory note bearing date by mistake on the 2st day of January, A. D. 1860, whereas in truth and in fact, the said was at the time of the making thereof, meant intended and understood by the said plaintiffs and said defendants, on the 1st day of January, A. D. 1861, and then and there delivered said note, &c.

13 October 21st, 1861. Motion of Orni E. Miles, to dismiss suit.

14 Plaintiff makes proof as to Bradford S. Miles, of publication by filing the following notice and and publishers certificate. Jeremiah Goodwin and Norton Goodwin vs. Oren E. Miles and Bradford S. Miles. Public notice is hereby given to said Bradford S. Miles that a writ of attachment issued out of the Office of the Clerk of the Court of Common Pleas of the City of Aurora, dated the 17th day of June, A. D. 1861, at the suit of said plaintiffs and against the estate of the said Bradford S. Miles for the sum of \$404 82-100 directed to the Sheriff of Kane County, which said writ has been returned executed. Now, therefore, &c., which notice is dated September 3d, 1861.

15 Publishers certificate stating that the notice was duly published in the issues of Sept. 5th, 12th, 19th and 26th, A. D. 1861, in the Aurora Beacon, which notice and certificate, were filed October 21st, 1861, and refiled March 24th 1862.

16 Oren E. Miles' motion to dismiss overruled. Judgment entered by default against Bradford S. Miles.

October 22d, 1861. General demurrer by Oren E. Miles to plaintiff's declaration and each and every count thereof.

Default as to Bradford S. Miles set aside on motion of plaintiff.

18 Plaintiffs join in demurrer of Oren E. Miles, demurrer overruled as to first count of declaration and sustained as to the balance of the counts.

Plaintiffs take leave to amend declaration.

March 24th, 1862. Default against Bradford S. Miles and judgment.

20 Rule on Oren E. Miles to plead instanter.

Default against Orrin E. Miles.

March 25th, judgment for \$434 90-100. Afterwards Bradford S. Miles enters his appearance and moves to set aside proceeding for irregularities; Court takes motion under advisement.

22 Motion sustained; leave given to plaintiffs to file amended bond and also file declaration as amended.

23 June term, A. D. 1862. June 16th, motion to dismiss suit as to Bradford S. Miles; Court to take motion under advisement.

24 June 25th, 1861. Motion by plaintiffs to amend bond and writ of attachment, return of Sheriff; granted by the Court.

29 June 26th, amended bond filed by plaintiffs, also return of summons as amended by Sheriff, as follows: "I hereby certify that I served the within writ by reading the same, upon the within named Oren E. Miles, on the 17th day of June, A. D. 1861, in the City of Aurora, and attached on the 17th day of June, A. D. 1861, lots 8, 9, and 10, in plot 4, in Hall's addition to West Aurora, June 26th, 1862; filed October 21st, 1861; refiled June 27th, 1862.

30 Motion to dismiss as to Bradford S. Miles, overruled. B. S. Miles excepts to the ruling of the Court in overruling said motion, and allowing plaintiffs to amend bond and return of writ of attachment.

31 Plaintiffs enter their motion for default and that the Court assess damages. The Court assesses plaintiff's damages at \$440 00 Judgment for the amount and costs.

32 Motion by defendant Bradford S. Miles to vacate judgment; motion overruled—defendant Bradford S. Miles excepts to the ruling of the Court.

33 Bill of Exceptions—L. R. Wagner, sworn for plaintiffs, who testifies as follows: "I had a conversation with Oren E. Miles, about this note, he stated to me that the note was in fact executed one year after its date," the plaintiffs then introduced the note in evidence as follows:

\$387 07.

West Aurora, Jan. 1st, 1860.

"First day of April after date, we jointly and severally promise to pay to the order of J. Goodwin & Co., three hundred and eighty-seven and 07-100 dollars, at ten per cent interest, for value rec'd.

O. E. Miles,

B. S. Miles.

This being all the evidence introduced in the cause, the bill of Exception was then and there signed, &c.

The Errors assigned are :

1st. The Court erred in not allowing O. E. Miles motion to dismiss suit.

2d. The Court erred in not sustaining the demurrer to the first count in the declaration.

3d. The Court erred in not allowing Bradford S. Miles motion to vacate all of the proceedings in whole, but only in part.

4th. The Court erred in not allowing Bradford S. Miles' motion to dismiss the case, as to him.

5th. The Court erred in allowing plaintiff to amend bond and return on writ.

6th. The Court erred in allowing judgment by default against Bradford S. Miles.

7th. The Court erred in rendering judgment against Bradford S. Miles, because it had no jurisdiction over him.

8th. The Court erred in hearing the evidence in the case without a jury to assess damages.

84 30 - 53

C.E. Moiles et al
by
J. Goodwin et al

at Tracy

Filed Apr 21, 1863
L. L. Linnell
Clerk

OWEN E. MILES,
BRADFORD S. MILES,
vs.
JEREMIAH & NEWTON GOODWIN,

Error from Court of Common Pleas of the City of Aurora.

BRIEF FOR DEFENDANT'S IN ERROR.

There is no error in overruling the motion to dismiss the suit on account of the defect in the writ. X
Sec. 8 of the Statute in relation to Attachments, (Ills. Statutes, page 229,) provides that no Writ of Attachment shall be quashed on account of any insufficiency thereof, if the Plaintiff shall cause the Writ to be amended.

This Section requires Courts to allow all defects to Writs, Bonds, Affidavits, &c., in Attachment cases to be amended, and discountenances objections which do not go to the merits, but are technical; and as the Plaintiff's below moved the Court to amend in the particular objected to, the Court did right in overruling the motion to dismiss and in allowing the Writ to be amended. 15 Ill. 266.

the 1st count in the declaration was good - and there was no error in overruling same -

The Plaintiff's in error cannot complain that the Defendant's in error alleged and proved, that the Note while dated January 2nd, 1860, should have been dated January 1st, 1861, because it was against the interests of the latter and benefited the former. A party cannot take advantage of an error which makes to his advantage.

In fact, however, no error in this particular occurred. *but if there was error the defendants by their default were out of Court and have no right to except to testimony*
Morton vs Bailey 18 Ill 213

The cases referred to (to wit, 27 Ills. 152. 14 Ills. 359, and 16 Ills. 27,) in the Brief by Attorney for Plaintiff's in error, have no application to this case. They decide that in a *Chancery* case against a non-resident, in addition to proof of publication of notice, there must be a return of the officer on the summons that the Defendant was not found. But however irregular the proceedings as to bringing Bradford S. Miles in Court by publication may have been, his appearance entered by himself in the cause afterwards, cures all errors. He is in Court, and having entered his appearance, he cannot object to proceedings, having for their object, simply to get him in Court.

23 Ills 88. 17 Ills 234. 25 Ills 107. 28 Ills 79

Owen E. Miles, both by service and appearance, being in Court, and Bradford S. Miles, by voluntarily coming in Court on the 25th day of March, 1862, and entering his appearance, and making motions, and taking steps in the cause, cannot be permitted to object for want of jurisdiction in the Court over them. *B. S. Miles - appearance was general and not*

limited to a particular purpose - (Record pages 21.23 - 29 -)

See cases above

The property attached, was situated within the City of Aurora, that is, within the jurisdiction of the Court, and by the amendment of the writ and return, the proceedings became regular and legal, and the property subject to the seizure on the writ.

~~See Page of Record~~ 24 to 29

The objections in this case are merely technical, the merits are all with the Defendant's in error, who have already been kept out of a just debt several years by legal Chicanery. It is therefore the duty of the Court to sustain the decisions of the Court below, unless there is clearly error in its determination.

28 28879 -

X The motion of C. E. Miles to dismiss the suit was not (as the attorney for the plaintiffs in error states) because the writ did not by its terms confine the officer in the execution of the writ to the city limits - because of an alleged variance between the writ and declaration - Record page 13416

As there was no variance the motion was properly overruled -
Bures 156 -

The attachment Bond, writ & return of the Sheriff under the leave of the court were so amended as to be unobjectionable

Record pages 24 to 29

Silvanus Miles
att'y for defts in error

No 30
as
O. E. Miles et al

Points & Arguments of
S. Miles et al for
def in E. case -

Filed Apr 20. 1864
J. Gilman M

STATE OF ILLINOIS,
SUPREME COURT.

} ss. The People of the State of Illinois,

To the Sheriff of Kane County, GREETING:

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Court of Common Pleas of the City of ~~Court of Anna~~, Kane County, before the Judge thereof, between Jeremiah Goodwin & Newton Goodwin

plaintiffs, and

Orin E. Cliles & Bradford S. Cliles

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

as we are informed by their complaints 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 Jeremiah Goodwin & Newton Goodwin

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 Jeremiah Goodwin & Newton Goodwin notice, together with this writ.

Witness, The Hon. John D. Paton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 30th day of September in the year of our Lord One Thousand Eight Hundred and Sixty-two.

L. Selawa
Clerk of the Supreme Court.

Shall as soon as possible



2/25/63

and, he within by reading to the within named
Christon Goodwin the 31st day of March 1863
and served by reading to the within named
Greeniach Goodwin the 18th day of April
A.D. 1863

Wm. H. Whipple Sheriff
per A. S. C. & Co. Deputy

by J. H. H. 1.00
S. H. H. 1.00
A. S. C. & Co. 1.00
Total 3.00

84-30

Wm. H. Whipple et al.

No. vs.
Greeniach Goodwin
Christon Goodwin

SCIRE FACIAS.

Filed... 23... A. D. 1863,

L. H. H. Clerk.

STATE OF ILLINOIS,
SUPREME COURT,

The People of the State of Illinois,
Plas of the City of Aurora

To the Clerk of the Court of Common Pleas of the County of Kane, Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Court of Common Pleas of the County of Kane, before the Judge thereof, between

Jeremiah Goodwin & Martin Goodwin

plaintiffs and

Orin E. Miles & Bradford S. Miles —

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

Defendants

as we are informed by them

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

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 30th day of September in the Year of Our Lord One Thousand Eight Hundred and Sixty-two.

Leland

Clerk of the Supreme Court.

30
Orin E. Clarksdale

No.

vs.

Jas. Goodwin et al.

WRIT OF ERROR.

FILED

Sept. 30.

D. 1862

L. A. Clark

Clerk.



United States of America
State of Illinois
County of Kane
City of Aurora

ss

Place before the
Honorable Benjamin
F. Parks The Judge
of the Court of Com-
mon Pleas of the
City of Aurora

At a regular term of Said Court of
Common Pleas of the City of Aurora begun
and held at the Court Room in the
City of Aurora in Said County and State
on the third Monday (the 16th day) of June
in the year of Our Lord One Thousand Eight
Hundred Six Two, and of the Independence
of Said United States the Eighty Six

Present The Honorable Benjamin F. Parks
The Judge of Said Court
Charles J. McTyner State Attorney
Demarcus Clark Sheriff of Kane County

Attest

Charles P. Johnston
Clerk

The Court opened by proclamation

Be it remembered that heretofore to wit
on the 17th day of June A.D. 1861. The following
affidavit for attachment was filed in the
Clerk's office of said Court. to wit.

State of Illinois }
Stearns County } ss

The Court of Common
Pleas of the City of Aurora
October Term A.D. 1861

Jeremiah Goodwin being first duly
sworn doth depose and say that Orrin
E. Miles and Bradford, S. Miles are jointly
indebted unto this affiant and Newton, P.
Goodwin (of the firm of J. Goodwin & Co.)
in a sum of money exceeding twenty dollars
to wit the sum of Four hundred and four
82/100 Dollars on a promissory note executed
by them on the first day of January A.D. 1860
for \$387.07 and due the first day of April
after date with interest at ten per cent per
annum And this affiant further states that
the said Bradford, S. Miles is not a resident
of this State

Subscribed and sworn
to before me this 17th
day of June A.D. 1861 } Jeremiah Goodwin
Lynnan. Baldwin
Justice of the Peace

Endorsed on the back as follows to wit:
 Filed June 17th 1861
 C. P. Johnston Clerk

And also on the same day to wit the 17th day of June A.D. 1861. the following described Bond was filed in the Clerk's office of said Court to wit

Know all men by these presents that we Jeremiah Goodwin and Newton R. Goodwin and Abrian Goodwin are held and firmly bound unto Orrin. E. Miles and Bradford. S. Miles in the penal sum of Nine Hundred Dollars lawful money of the United States for the payment of which sum we bind ourselves our heirs, executors, Administrators and assigns each and every of them firmly by these presents Witness our hands and Seals this 17th day of June A.D. 1861.

The Condition of this obligation is such that whereas the above boundmen Jeremiah and Newton R. Goodwin hath on the day of the date hereof procured an attachment out of the Court of Common Pleas of the City of Amherst at the Suit of Jeremiah Goodwin and Newton. R. Goodwin against the estate of the above named Bradford. S. Miles for the sum of Four Hundred and four 82/100. Dollars And the same being about

Page 4th

to be sued of the said Court - returnable on
the third Monday of October next to the
term of the Court then to be holden Now if
the said Jeremiah and Newton, R. Goodwin
shall prosecute their suit with effect or in
case of failure therein shall well and truly
pay or cause to be paid and satisfy the said
Heile his heirs executors or administrators in
any suit or suits which may hereafter be
brought for wrongfully serving out the said
attachment then the above obligation to
be void otherwise to remain in full force
and effect -

Jeremiah Goodwin Clerk
N. R. Goodwin Clerk
Newton Goodwin Clerk

Endorsed on the back as follows to wit -

^{sup}Filed June 17th 1861

C. P. Johnston Clerk

Refiled June 6th 1861

C. P. Johnston Clerk

And also on the same day to wit the 17th
day of June A.D. 1861, the following writ of
attachment issued out of and under seal of
said Court to wit -

State of Illinois
Kane County } ss
City of Aurora }

The People of the State of Illinois
to the Sheriff of Kane County. Greeting;

Whereas Jeremiah Goodwin
hath complained on oath to Chas. P. Johnston
clerk of the Court of Common Pleas of the
City of Aurora that Edwin E. Miles and
Bradford S. Miles are justly indebted to
the said Jeremiah Goodwin and Newton
B. Goodwin of the firm of J. Goodwin & Co.
to the amount four hundred and four
\$41.00 Dollars and oath having been ^{also} made
that said Bradford S. Miles is not a resi-
dent of this State. And the said Jeremiah
Goodwin & Newton B. Goodwin having given
bond and security according to the directions of
the act in such case made and provided

We therefore command you that
you attach so much of the estate real or personal
of the said Bradford S. Miles to be found in
your County as shall be of value sufficient
to satisfy the said debt and costs according
to the complaint and such estate so attach-
ed in your hands to secure or so to provide
that the same may be liable to further proceedings
thereupon according to law at a Term of said
Court to be holden at the City of Aurora in
the County of Kane on the Third Monday of
October next so as to compel the said
Bradford S. Miles to appear and answer
the complaint of the said Jeremiah Goodwin

Page 6th

and Newton, R. Goodwin and that you
also summons as garnished to be and
appear before the said Court on the said
third Monday of October next there and then
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.

We also command you to
summon the said Bradf. S. Miles & Orrin
E. Miles if they shall be found in your
county personally to be and appear before
the said Court of Common Pleas of the City
of Anna on the first day of said Term
to be holden at the Court Room in the City
of Anna in said County on the said third
Monday of October next to answer unto said
~~Jefferson~~ Goodwin and Newton, R.
Goodwin in their said attachment
and have you then and then this writ
with an endorsement thereon in what
manner you shall have executed the same

Witness Charles P. Johnston
Clerk of our said Court and
the seal thereof at the City
of Anna aforesaid this 17th
day of June A.D. 1861
C. P. Johnston
Clerk



Page 7th Endorsed on the back as follows to wit
By virtue of the within attachment I did
on the 17th day of June A.D. 1861 attach the
following described property to Wm Lots 8, 9 & 10
in Block 4 all addition to West Ammon
And on the 17th day June 1861 I served the
within writ upon Amin. E. Miles by reading
to him Bradford S. Miles not being found in
my County
D. Clark Sheriff

By J. D. Adams Deputy
By way of amendment to the above return I
hereby certify that I served the within writ
by reading the same upon the within named
Amin E. Miles on the 17th day of June A.D. 1861
in the City of Ammon and attached on the
17th day of June A.D. 1861 Lots 8, 9 & 10 in
Block 4 in Heals addition to West
Ammon in the City of Ammon

June 26th 1862 D. Clark Sheriff
By J. D. Adams Deputy

Filed Oct 21st 1861

C. P. Johnston Clerk

Refiled June 27th 1861

C. P. Johnston Clerk

And afterwards to wit on the 9th
day of October A.D. 1861 the following
Declaration was filed in the clerk's office of
said court to wit-

State of Illinois
Harris County } ss
City of Anna

The Court of Common Pleas of the City of Anna
October Term A.D. 1861

Ossin. E. Moile and

Bradford S. Moile Defendants in this suit
are summoned to answer Jeremiah Goodwin
and Newton B. Goodwin plaintiffs in this suit
in a plea of Trespass on the case upon promises
and thereupon the said plaintiffs by Leonard
B. Wagnor their Attorney complain for that
whereas the said Defendants heretofore to wit
on the first day of January in the year of
Our Lord One thousand eight hundred and
Sixty one at Anna to wit at the City of
Anna aforesaid made a certain note
in writing commonly called a promissory
note bearing date by mistake on the first day
of January A.D. 1860 whereas in truth and
in fact the said note was at the time of the
making thereof meant ~~made~~ intended and
understood by the said plaintiffs and the said
Defendants on the first day of January A.D. 1861
and then and there delivered the said note
to the said plaintiffs by which said note the
said Defendants jointly and severally promised
to pay the said plaintiffs by the name and style
of J. Goodwin & Co. the sum of three hundred
and eighty Seven ¹⁰⁰/₁₀₀ Dollars on the first day
of April after the date of said note that

Page 9th

that is to say on the first day of April after
after the first day of January A.D. 1861 which
period has elapsed with interest thereon at the
rate of ten per cent per annum. By reason
whereof and by force of the Statute in such case
made and provided the said defendants then
and there became liable to pay to the said
plaintiffs the said sum of money in the said
note specified according to the tenor and effect
of the said note and being so liable the said
defendants in consideration thereof afterwards
to wit on the same day and year and at the
place aforesaid undertook and then and there
faithfully promised the said plaintiffs well and
truly to pay unto the said plaintiffs the said
sum of money in the said note specified
according to the tenor and effect of the said note
And whereas also the said defendants after-
wards to wit on the eighth day of October in
the year of Our Lord one thousand eight hundred
and sixty one at the place aforesaid were indebted
to the plaintiffs in the sum of Five Hundred
dollars lawful money of the United States of
America for goods. Wares and Merchandise
sold and delivered to the said defendants
by the said plaintiffs at said defendants
request and also in the further sum of five
hundred dollars for money before that time
lent and advanced by the said plaintiffs
to the said defendants and at the request of

Page 10th

of the said defendants And also in the
further sum of five hundred dollars for
other money by the said plaintiffs before
that time paid laid out and expended
for the said defendants and at the like
request of the said defendants And also ⁱⁿ the
further sum of five hundred dollars for
other money by said defendants before that
time had and received to and for the
use of the said plaintiffs. And being so
indebted the said defendants in consideration
thereof afterwards to wit on the same day and
year last ~~survived~~ aforesaid and at the
place aforesaid undertook and then and
there faithfully promised the said plaintiffs
well and truly to pay unto the said plain-
-tiffs the said sum of money in this count
mentioned when the said defendants should
thereunto afterwards be requested And whereas
also the said defendants afterwards to wit
on the same day and year last aforesaid
and at the place aforesaid accounted together
with the said plaintiffs of and concerning
divers other sums of money before that time
due and owing from the said defendants
to the said plaintiffs And then and thus
being in arrears and unpaid and upon
such accounting the said ~~defendants~~ defendants
then and there were found to be in arrears
and indebted to the said plaintiffs in the

further sum of five hundred dollars of like lawful money aforesaid. And being so found in law and indebted to the said plaintiffs the said defendants in consideration after words to wit on the same day and year aforesaid and at the same place aforesaid undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last aforesaid mentioned when the said defendants should be thereunto afterwards requested.

Nevertheless the said defendants (although often requested &c to wit on the day when the said note became due and payable according to the tenor and effect thereof and of oftentimes since to wit at the place aforesaid) have not yet paid the said several sums of money above mentioned or any one either of them or any part thereof to the said plaintiffs but to pay the same or any part thereof to the said plaintiffs the said defendants have hitherto altogether refused and still do refuse to the damage of said plaintiff of five hundred dollars and therefore the said plaintiff bring suit &c

L. R. Wagner plaintiffs
Attorney

Copy of Note and account
declared upon

West Amherst Jan 14th 1861

First day of April after date we jointly and severally promise to pay to the order of J Goodwin & Co. Three Hundred & Eighty Seven & 10/100 Dollars at two per cent interest for value received

Signed O. E. Miles
B. S. Miles

Debt to J. P. D.	
To Money had and received	\$ 500.
" " Lent	\$ 500.
" " Ad for debt	\$ 500.
" Goods Trans & Merchandise	500.
" Work & Labor	500.
" Balance due on Settlements	<u>500.</u>

Filed October 9th 1861

C. P. Johnston Clerk

Refiled Jan 6th 1862

C. P. Johnston Clerk

And afterwards to wit on the 21st day of October A.D. 1861 it being one of the days of the regular October term of said Court the following among other proceedings were had and entered of record in said Court in said Cause to wit

Jeremiah Goodwin

vs

et al

Attachment

Orrin E. Miles &
Bradford S. Miles

13

This day comes the defend-
-ant Amos E. Miles by C. J. Metcalf his
Attorney and enters his motion to dismiss
this cause for variance between the writ
and now in this cause

Thereupon comes the
plaintiffs and makes proof of publication
as to Bradford S. Miles one of the defendants
by which it appears that said defendant
Bradford S. Miles has been duly notified of
the pendency of this suit by publication
in the Aurora Beacon a newspaper published
within the City of Aurora County of Illinois
and State of Illinois of a notice containing
the title of the Court names of the parties the
pendency of the suit and the time and place
of the return of the summons for four succes-
-ive weeks

And also on the same day to wit
the 21st day of October A.D. 1861 the following Notice
and publisher's certificate was filed in the clerk
office in said Court to wit-

State of Illinois
Frank County
City of Aurora

The Court of Common Pleas
of the City of Aurora
October Term A.D. 1861

Jeremiah Goodwin &
Newton B. Goodwin
vs

Omin. E. Miles &
Bradford S. Miles

Public notice is hereby given to the said Bradford S. Miles that a writ of attachment issued out of the Clerk's office of the Court of Common Pleas of the City of Anna dated the 17th day of June A.D. 1861 at the suit of the said Jeremiah and Newton R. Grodwin and against the estate of the said Bradford S. Miles for the sum of four hundred and four 82/100 dollars directed to the Sheriff of Anne County which said writ has been returned executed.

Now therefore unless you the said Bradford S. Miles shall be and personally appear before the said Court of Common Pleas on or before the first day of the next term thereof to be holden at the Court House in the said City of Anna on the third Monday of October next A.D. 1861 give special bail and plead to the said plaintiffs action judgment will be entered against you and in favor of the said plaintiffs 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.

C. P. Johnston Clerk
L. R. Wagner Plaintiff Attorney
Anna Sept 3rd 1861

Publisher Certificate

J. O. B. Enckhuoer
 one of the publishers of the Anna Weekly
 Beacon a newspaper published in the City
 of Anna County of Time and State of
 Illinois do hereby certify that the annexed
 Advertisement of an attached Notice in the
 case Goodwin vs. Mills was duly publish-
 ed in the issues of Sept 5th, 12th, 19th, 26th
 A.D. 1861 and that the same was done by the
 order of L. B. Wagner atty

O. B. Enckhuoer

Anna Oct 21. 1861

Charge. \$3.75

Filed Oct 21st 1861

C. P. Johnston clerk

Refiled March 24th 1862

C. P. Johnston clerk

And appeared to wit on the 22^d
 day of October A.D. 1861 The same being one
 of the days of the regular October Term A.D. 1861
 of said Court the following among other
 proceedings were had in this cause and
 entered of record in said Court to wit

Jeremiah Goodwin
 vs
 et al

vs
 Orrin, E. Miles &
 Bradford, S. Miles } Attachment

This day this cause coming on to be heard upon the motion of defendant Orrin, E. Miles heretofore entered to dismiss this cause and the Court now being fully advised overrule said motion to which decision of the Court the defendant Orrin, E. Miles at the time excepted

Thereupon on plaintiff's motion the defendant Bradford, S. Miles being three times solemnly called in open Court comes not nor any one for him but makes default which is ordered by the Court to be taken and entered of record and that plaintiff have judgment herein against said defendant Bradford, S. Miles by default

And also on the same day to wit the 22^d day of October A.D. 1862 the same being one of the days of the regular October Term A.D. 1861 of said Court the following Demurrer to plaintiff's declaration was filed in the office of the Clerk of said Court in this cause to wit

Jeremiah Goodwin

vs

vs also

} Court of Common
 Pleas of the City of

Page 17th Orrin, E. Miles & } of Amherst
Bradford, S. Miles } October Term AD 1861

And now comes the said
Defendant O. E. Miles by C. J. Mestyns his
Attorney comes and says that the matters
and things in said plaintiffs declaration
and each and every count thereof set forth
are insufficiently in law to have or main-
tain his aforesaid action against him
and therefore he prays. Judgment &c

C. J. Mestyns

Atty for O. E. Miles

Endorsed on the Back as follows to wit
Filed Oct-22 1861

C. P. Johnston Clerk

And afterwards to wit on the 23rd
day of October AD 1861 the same being one
of the days of the regular October Term AD 1861
of said Court the following among other proceed-
ings were had in this cause and entered of
record in said Court to wit

Jeremiah. Goodwin

vs

vs

Orrin E. Miles &
Bradford, S. Miles

} attachment

This day comes

Page 18th comes the plaintiff by L. R. Wagner their attorney and on his motion the defendant of Bradfnd. S. Miles heretofore ^{taken and} entered of record is set aside and held for naught.

Thereupon comes the defendant Orrin, E. Miles by R. J. Metcune his attorney and enters his demurrer to the plaintiff's declaration in which plaintiff joins and the Court being fully advised overrule said demurrer as to the first count of said declaration and sustains it as to the balance.

Therefore it is considered by the Court that said defendant Orrin, E. Miles have and receive of said plaintiff his costs and charges by him about this demurrer expended and have execution therefor.

Thereupon this cause is continued for the term and leave is given the plaintiff to amend their declaration herein.

And afterwards the said declaration was amended so as to read the first day of June in the year of our Lord one thousand eight ^{hundred} (instead of the eighth day of October)

And afterwards to wit on the 24th day of March A D 1862 the same being one of the days of the regular March Term A D. 1862 of said Court the following among other proceedings were had in this

Page 19th cause and intend of record to wit

Jeremiah Godwin

et al

^{vs}
Orin. E. Miles &
Bradford S. Miles

} Attachment

This day comes the plaintiff to this Suit by L. R. Wagner their attorney and makes proof of publication as to Bradford S. Miles one of the defendants by which it appears that said defendant Bradford S. Miles has been duly notified of the pendency of this Suit by publication in the Aurora Beacon a newspaper published within the City of Aurora County of Kane and State of Illinois of a notice containing the title of the Court names of the parties the pendency of the Suit and the time and the place of the return of the summons for four successive weeks

Thereupon on plaintiffs motion the defendant Bradford S. Miles was three times solemnly called in open Court comes not nor any one for him but herein wholly make default which is ordered by the Court to be taken and intend of record and the plaintiffs have judgment herein against said defendant Bradford S. Miles

Thereupon comes the plaintiffs

Page 20th

by L. R. Wagner their Attorney and enters herein his motion for a rule upon defendant Orrin, E. Miles to plead instantly and the Court being fully advised grants said motion. Again comes said plaintiffs by their counsel and enters their motion for default - as to Orrin, E. Miles. It is ordered by the Court that said defendant Orrin, E. Miles be called. And the said defendant Orrin, E. Miles being three times & solemnly called in open Court comes not nor any one for him but herein wholly makes default. It is ordered by the Court to be taken and entered on record and on motion of plaintiffs that the case be submitted to the Court to be heard at some future day.

And afterwards to wit on the 25th day of March A. D. 1862 the same being one of the days of the regular March Term A. D. 1862 of said Court the following among other proceedings were had in this cause and entered of Record in said Court to wit

Jeremiah Goodwin	}	Attachment
et al		
vs		
Orrin, E. Miles & Bradford, S. Miles		
		This cause again

Page 214

coming on to be heard and this cause having been previously submitted to the Court and the Court after hearing the evidence adduced and proof finds the issue joined for the plaintiffs and award their Damages to the sum of Four Hundred and Thirty four Dollars and Ninety cents

Therefore it is considered by the Court that said plaintiffs have and recover of said defendants their Damages of Four Hundred and Thirty four Dollars and Ninety cents in form aforesaid awarded and also their costs and charges by them about this Suit expended and have execution therefor

Thereupon comes Bradford S. Mole one of the Defendants to this Suit by C. J. Metyre his Attorney and enters herein his motion to set aside proceedings on account of irregularity and the Court not being fully advised take time to consider

And also on the same day to wit the 25th day of March A D 1862 the same being one of the days of the regular March Term A D 1862 the following note was filed in clerk's office in said cause and in said Court to wit:

\$384.07

West. Term Jan 1st 1860
First day of April after date

Page 22 Jointly and severally promise to pay
to the order of J. Goodwin & Co. One
hundred and eighty seven & 7/10 Dollars
at Ten per cent Interest
for value received

O. E. Meiles
B. S. Meiles

Filed March 25th 1862
C. P. Johnston Clerk

Refiled June 27th 1862
C. P. Johnston Clerk

And afterwards to wit on the
3^d day of April A.D. 1862 the same being
one of the days of the regular March Term
A.D. 1862 of said Court the following
among other proceedings were had in this
case and entered of record in said Court
to wit-

Jeremiah Goodwin
vs
Orrin E. Meiles &
Bradford S. Meiles } attachment

This day this case
coming on to hear on the motion to set
aside proceedings for irregularity heretofore entered

Page 23

by Bradford, S. Meile one of the Defendants
and the Court now being fully advised
sustains said motion to set aside proceed-
ings for Irregularity

It is therefore ordered by the
Court that the Judgment heretofore entered
in this cause be and is hereby set aside and
held for naught And that ^{the} plaintiffs have
leave to file amended Bond and also to file
Declaration as amended

And afterwards to wit on the
16th day of June A D 1862 the same being
one of the days of the regular June Term
A D 1862 of said Court the following
among other proceedings were had in
this cause and entered of record in said
Court to wit

Jeremiah Goodwin

vs

Carrie E. Meile &
Bradford S. Meile

attachment

This day this cause
coming on to be heard and on motion of
C. J. Mottins attorney for Bradford, S. Meile
to dismiss this suit as to said Bradford, S.
Meile for want of regularity of proceedings
and the Court not being fully advised

Page 24th takes time to consider

And afterwards to wit on the
25th day of June A D 1862 the following
~~among other proceedings were heard~~ the same
being one of the days of the regular June Term
A D 1862 of said Court the following among
other proceedings were heard in this cause and
entered of Record to wit-

Jeremiah Goodwin	}	Attachment
vs		
Orin. C. Miles &		
Bradford S. Miles		

This day on motion of
plaintiffs leave is given plaintiffs to amend
Bond and writ of Attachment and the
return of sheriff by the meeting of the Court
to morrow morning

And afterwards to wit on the
26th day of June A D 1862 the same being one
of the days of the regular June term A D 1862
the following Amended Bond was filed in
clerk's office in said Court to wit-

Know all by these presents
that we Jeremiah Goodwin and Newton
B. Goodwin and Charles A. Goodwin

Page 20th

are held and firmly bound unto
Bradford, S. Miles in the penal sum of
Nine hundred dollars for the payment of
which sum we bind ourselves our heirs
executors administrators and assigns each
and every of them jointly by these presents

Witness our hands and Seals this 26th
day of June A.D. 1862

The Condition of this obligation
is such that whereas the above bounden
Jeremiah & Newton, R. Goodwin on the 1st
day of June A.D. 1861 procured an attachment
out of the Court of Common Pleas of the
City of Annapolis County of Prince George's State
of Illinois at the Suit of Jeremiah Goodwin
and Newton R. Goodwin Against the estate
of Bradford, S. Miles for the sum of four
hundred and four 82/100 dollars and the
same having been sued out of said Court
Now if the said Jeremiah & Newton, R.
Goodwin shall prosecute their Suit with
effect or in case of failure therein shall
well and truly pay and satisfy the said
Bradford, S. Miles all such costs in said
Suit and such damages as shall be award-
ed Against the said Jeremiah & Newton
R. Goodwin their heirs executors or admin-
istrators in any suit or suits which may
hereafter be brought for wrongfully suing
out said attachment then the above

Page 26th obligation to be void otherwise to remain
in full force and effect

Jeremiah Grodwin Esq
N. R. Grodwin Esq
C. R. Grodwin Esq

Endorsed on the back as follows to wit
Filed June 26th 1862

C. P. Johnston Clerk

And afterwards to wit on
the 27th day of June A D 1862 the same
being one of the days of the regular June
Term A D 1862 of said Court - the following
~~Amended~~ writ of Attachment ^{as amended} and amend-
ed sheriff's return thereto was filed in
said cause ~~or~~ to wit

State of Illinois
Harris County } ss
City of Annapolis

The People of the State
of Illinois to the Sheriff of Harris County,
Greeting;

Whereas Jeremiah Grodwin
hath complained on oath to Chas. P. Johnston
Clerk of the Court of Common Pleas of the
City of Annapolis that Amos E. Miles and
Bradford S. Miles are justly indebted
to the said Jeremiah Grodwin and
Newton R. Grodwin of the firm of
J. Grodwin and Co^{ys} to the amount of

Page 2nd

Now Hermauld and for 82/100 dollars
and oath having been ^{also} made that said
Bradford, S. Meile is not a resident of
this State And the said Jeremiah
Goodwin and Newton, R. Goodwin having
given bond and security according
to the directions of the act in such made
and provided We therefore command
you that you attach so much of the
estate real or personal of the said Brad-
ford, S. Meile to be found in the City of
Amherst in your County as shall be of
value sufficient to satisfy the said debt
and costs according to the complaint and
such estate so attached in your hands to
seize or so to provide that the same may
be liable to further proceedings thereupon
according to law at a term of said Court
to be holden at the City of Amherst in the
County of Brand on the Third Monday of
October next so as to compel the said
Bradford, S. Meile to appear and answer
the complaint of the said Jeremiah Good-
win and Newton, R. Goodwin and that
you also summon as furnished to be
and appear before the said Court on
the said Third Monday of October
next then and there to answer what may
be objected against him when and
where you shall make known to the

Page 28th said Court how you have executed this writ

We also command you to summon the said Bradford, S. Meile and Orrin, E. Meile if they shall be found in the City of Amherst in your County personally to be and appear before the said Court of Common Pleas of the City of Amherst on the first day of said Term to be holden at the Court in the City of Amherst in said County on the said third Monday of October next to answer unto said Jeremiah Goodwin and Newton, R. Goodwin in their said attachment. And have you then and then this writ with an endorsement thereon in what manner you shall have executed the same

Seal

Witness Charles P. Johnston
Clerk of said Court
and the Seal thereof at the
City of Amherst aforesaid
this 17th day of June A.D.
1861

C. P. Johnston

Clerk

Endorsed on the back as follows to wit
By virtue of the within attachment I
did on the 17th day of June A.D. 1861
attach the following described property

Page 2nd to wit Lots 8, 9 & 10, in Block 10 from (H)
Halls addition to west-Annua

And on the 17th day of June
1861 I served the within upon Ann. E.
Meile by reading to him

Braden S. Meile not
found in my County

D. Clark Sheriff

By J. D. Andrews Deputy

By way of amendment to the above return
I hereby certify that I served the within writ
by reading the same upon the within named
Ann. E. Meile on the 17th day of June A.D. 1861
in the City of Annua and attached on the 17th
day of June A.D. 1861 Lots 8, 9 & 10, in Block
(H) in Halls addition to west-Annua in the
City of Annua

June 26th 1862

Dimonius Clark Sheriff

By J. D. Andrews. Deputy

^{sup}Filed October 31st 1861

C. P. Johnston Clerk

Refiled June 27th 1862

C. P. Johnston Clerk

And also on the same day
to wit on the 27th day of June A.D. 1862
the same being one of the days of the regular
June Term A.D. 1862 ~~that~~ of said Court
the following among other proceedings

Page 30th were had in said cause and notice
of record in said Court to wit

Jeremiah Goodwin
vs
Orrin E. Meile &
Bradford S. Meile. } attachment

This day this cause
coming on to be heard on the Defendants
motion heretofore entered to dismiss as to
Bradford S. Meile and the Court now being
fully advised denies said motion to dismiss
as to Bradford S. Meile To which decision
of the Court in overruling said motion to dis-
miss as to Bradford S. Meile and allowing
the plaintiffs to amend bond writ of attach-
ment and the return of the Sheriff the Defendant
by his counsel then and there excepted

Whereupon comes the plaintiffs
by their attorney and enters herein their motion
for default and that Court upon ^{the} damages
said plaintiffs have sustained And it
appearing to the Court that due publication
as to Bradford S. Meile one of the Defendants
in this cause has been duly notified of the
pendency of this suit by publication in the
Amara Beacon a newspaper published
within the City of Amara County of Grand
and State of Illinois of a notice containing

Page 81st - ing the title of the Court names of the parties
the pendency of the suit and the time and
place of the return of the summons for
four successive weeks and it also appear
-ing to the Court - that Currier, E. M. is one of
the defendants in this suit that due person
-al service of process of summons was duly
had upon said defendant at least ten
days previous to the first of the present
term of this Court.

It is ordered by the Court that
each of said defendants be three times called
and they being each three times solemnly
called in open Court come not nor any
one for them but herein wholly make defen
-ult. It is therefore ordered by the Court to be
taken and entered of record. And the Court
after hearing the evidence adduced and proof
finds the issue joined for the plaintiffs and
awards them damages at the sum of Forty
Dollars and Forty Dollars.

It is therefore considered by
the Court that said plaintiffs have and
recover of said defendants their damages of
Forty Dollars and Forty Dollars in
form aforesaid assessed and also their costs
and charges by them about this suit expend
-ed and have ~~special~~ execution therefor.

Whereupon come the defendants
and enter herein their motion to vacate the

Judgment and the Court being fully advised denies said motion to vacate the Judgment herein. To which decision of the Court in denying said motion to vacate Judgment herein the defendants then and there excepted.

It is ordered by the Court that said defendants have sixty days to file their Bill of exceptions herein. And it is also ordered that by the Court that a special execution issue herein for the sale of the property attached of Bradford S. Mide.

And afterwards to wit on the 27th day of July A D, 1862. the following Bill of exceptions was filed in the clerk's office of said Court in said Cause to wit

Jeremiah Goodwin &
Newton. Goodwin
vs
Orvin. E. Mide &
Bradford S. Mide

Court of Common
Pleas of the City
of Anna Jono
Term A D 1862

And be it remem-
bered that on the 27th day of June A D 1862
it still being one of the days of the June
term A D, 1862 of said Court. the Court asked
the attorney for the respective parties whether
there would be a jury trial in said cause
and the attorney for the defendants was asked
to waive a jury and submit said cause

to the Court - which the Attorney for the defendant refused because he did not desire to enter all appearances as he did not

to appear further on his motion to dismiss then depending and on the 27th day of June A.D. 1862 it still being one of the days of said Court - the said Court being about to assess plaintiffs damages in said cause the plaintiffs introduced L. B. Wagoner Esq. who being duly sworn testified as follows I had a conversation with Ann E. Miles about this note he stated to me that the note was in fact executed one year after its date the plaintiffs then and there introduced the following note in evidence under the special and common counts

\$587.07

West Anna Jan 1st 1860

First Day of April after date we jointly and severally promise to pay to the Order of J. Goodwin & Co Three hundred and Eighty Seven ¹⁰⁰/₁₀₀ Dollars at Ten per cent interest for value received

A. E. Miles

B. S. Miles

this being all the evidence in the case the Court assessed the plaintiffs damages at \$440 and said defendant Ann E. Miles ask that this bill of exception may be signed and sealed which

Page 34th is then and then done

B. H. Parks Seal

Judge of the Court-Commons

Plas of the City of Amos

Endorsed on the back as follows to wit

Filed July 7th 1862

C. P. Johnston

Clk

State of Illinois
County of Adams } ss
City of Amos

I Charles P. Johnston Clerk
of the Court of Commons and Pleas of the City of
Amos do hereby certify that the above and
foregoing transcript contains a true and
^{and complete} correct copy of all the proceedings on paper
files and records in a certain cause lately
pending in said Court of Commons and Pleas of
the City of Amos wherein Jeremiah Goodwin
and Newton B. Goodwin are plaintiffs and
Orvin E. Meigs and Bradford S. Meigs are
defendants as appears to us of record

Witness my hand and Seal
of said Court at Amos
Illinois this 8th day of July
A. D. 1862

C. P. Johnston
Clk

Orin E Miles
Bradford Miles
vs
Jeremiah Goodwin
Newton Goodwin

Supreme Court of
the State of Illinois
April term 1880.
Hb. 3

And now comes the
plaintiffs in Error by ~~their~~ ^{their} attorney to say that there is
error in the following record as follows

1st The court erred in not allowing Orin
E Miles motion to dismiss suit.

2^d The court erred in not sustaining the
demurrer to the 1st count in the declaration.

3 The court erred in not vacating allowing
Bradford Miles motion to vacate all of the
proceedings, in whole, but only in part.

4 The court erred in not allowing Bradford
Miles motion to dismiss the case as it
laine,

5th The court erred in allowing plaintiffs to
amend the bond to return on writ.

6 The court erred in allowing judgment by
default against Bradford Miles,

7 The court erred in rendering judgment

against Bradford S Miles because it
had no jurisdiction over him.

5th The court ^{made in hearing} ~~had no right to~~ hear the
evidence in the case without a jury to
assess the damages.

Wherefore said plain-
tiffs ask that said judgment and
the proceedings herein may be reversed
annulled and set aside.

C. F. Stephens
Attorney for Plaintiffs
in Error.

Benjamin Goodwin & al
vs

Supreme Court, April Term AD 1864

Omin E Miles & al

And now to wit April 19th 1864
come the said defendants in Error by S Miles their
attorney and say that there are no such
errors in the foregoing record as the said
plaintiffs in error have thereof alleged wherefore
they pray that the foregoing judgment and
proceedings in all respects be affirmed

S. Miles
att'y for depts in Error

Common. Pleas. Aurora.

Jeremiah. Goodwin,
et als

vs

Orrin. E. Miles,
et als

Copy of Record

Filed Sept. 30. 1862.
L. Seland
Clerk.

Fees.

71. F. bios 7/10

Cert & seal 35

\$ 7.45

Orin E Miles & Bradford S
Miles Plaintiffs in Error
as
Jeremiah Godwin & Newton
Godwin Defendants in Error

Supreme Court of the
State of Illinois 3^d
Grand division April
Term AD 1864.

Argument for Plaintiffs in Error.

We claim that the judgment entered in this case, is clearly erroneous. The motion to dismiss the suit on account of the defect in the writ should have been allowed. The writ was directed to the Sheriff of Kane County, against the estate of Bradford S Miles found in the County, and directed the Sheriff to summon the defendants if found within his County. The writ was returned by the Officer, as executed by attaching the real estate of Bradford S Miles, and reading the same to Orin E Miles, Bradford S Miles not found in the County. The return did not show ~~or~~ that the writ was served by the Officer within the limits of the City of Aurora.

In the case of Phyl vs Co. rel 26th Ills. 434. the Court says "We are therefore of the opinion, that the Court had no authority to send its original process beyond the limits of the City, and that the summons in this case, as well as the service, was unauthorized and void.

see also 27th Ills. 509.

This motion was made by Orin E Miles, alone, after

wants, proof of notice by publication was made as to Bradford S Miles, judgment by default entered and then Bradford S Miles, comes into court, and moves said court to set aside proceedings for irregularities, which motion was sustained in part, and leave given to plaintiffs to amend bond, and file declaration as amended. see record P. 22.

The demurrer of Orin E Miles to the first count in the declaration ought to have been sustained, 1st because ~~the~~ court of law will not correct mistakes of facts, and 2^d the count is indefinite, it alleges that the parties intended said note on the first day of January A.D. 1861, intended what? to date it, deliver it, or what.

The 3^d assignment of error is that the court erred in not vacating the entire proceedings on motion of B. S. Miles 1st because the writ was void, and hence all subsequent proceedings, and 2^d the service by publication was unauthorized and void. The statute provides that on the return of any writ of attachment it shall be the duty of the clerk to give for four weeks successive notice &c.

The writ was not returned by the Officer till October 25th 1861, the notice was dated Sept 3^d 1861. How could this clerk know that the writ would be returned defendant B. S. Miles not found, till the writ was

returned to him, with the proper return of the Officer! there can be no question but what the notice was prematurely published, and that no foundation for such notice was laid. The cases cited in my brief are conclusive upon the question.

The only appearance ever entered by B. S. Miles was after judgment, had been entered against him by default; he then appears to make the motion to vacate the proceedings on account of irregularity which motion was only partly granted, while we assign for error. His ^{cross} motion was made at that time to amend the defective writ, service and publication, but on the contrary the plaintiff chose to stand by his papers. Therefore he must take the ordinary consequences attaching to his act.

And finally on the 7th assignment of error we insist, that it was irregular for the court to hear the evidence and assess the damages without a jury. Witnesses were sworn to prove the time of the execution of the note, also the signature of the note, which was introduced under the special and common count of the declaration. The statute is peremptory on the subject, a jury must be empanelled to hear the evidence and assess the damages.

C. J. Metzger
Attorney for
Miles

30
Orin E Miles vs Brad-
ford S Miles

vs
Jeremiah Goodwin
& et al.

Argument for
Plaintiffs in Error

Filed Apr 28. 1864

J. H. C. Clerk

Supreme Court of the State of Illinois,
THIRD GRAND DIVISION.

APRIL TERM, A. D. 1861.

OREN E. MILES AND BRADFORD S. MILES	}	Attachment.
vs		
JEREMIAH GOODWIN & NEWTON GOODWIN		

Page of
Record.

2

Affidavit for attachment filed June 17th, 1861. Affidavit states that defendants Oren E. and Bradford C. Miles are indebted unto the plaintiffs in a sum of money exceeding \$20 00 to-wit \$404 82-100, on a promissory note executed the 1st day of January, 1860, for \$387 07, and due the 1st day of April, after date, with interest at ten per cent per annum, and that Bradford S. Miles is not a resident of this State.

- 3 June 17th, 1861. Attachment bond filed signed by the plaintiffs and Hiram Goodwin as surety, for nine hundred dollars, running to Oren E. and Bradford S. Miles, reciting that a writ of attachment has been sued out of the Office of the Clerk of the Court of Common Pleas against the estate of Bradford S. Miles, for the
- 4 sum of \$404 82-100, and conditioned that said plaintiff prosecute their suit with effect, or in case of failure therein, shall well and
- 5 truly pay, or cause to be paid, and satisfy the said Miles his heirs executors or administrators, in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment.

- 6 June 17th, 1861. Attachment writ issued directed to the Sheriff of Kane County, against the estate of Bradford S. Miles to be found in his County, and directing the Sheriff to summons the
- 7 defendants if found within his County, which writ is returned by the Officer and executed by attaching the real estate of Bradford S. Miles, and reading the same to Oren E. Miles, Bradford S. Miles not found in the County. Writ filed in the Office of the Clerk, October 21st, 1861.

8 October 9th, 1861. Declaration filed, containing one special and the common counts; the special count avers that the defendants on the 1st day of January, A. D. 1861, at Aurora, to-wit: at the City of Aurora, made a certain note in writing, commonly called a promissory note bearing date by mistake on the 2st day of January, A. D. 1860, whereas in truth and in fact, the said was at the time of the making thereof, meant intended and understood by the said plaintiffs and said defendants, on the 1st day of January, A. D. 1861, and then and there delivered said note, &c.

13 October 21st, 1861. Motion of Orni E. Miles, to dismiss suit.

14 Plaintiff makes proof as to Bradford S. Miles, of publication by filing the following notice and and publishers certificate. Jeremiah Goodwin and Norton Goodwin vs. Oren E. Miles and Bradford S. Miles. Public notice is hereby given to said Bradford S. Miles that a writ of attachment issued out of the Office of the Clerk of the Court of Common Pleas of the City of Aurora, dated the 17th day of June, A. D. 1861, at the suit of said plaintiffs and against the estate of the said Bradford S. Miles for the sum of \$404 82-100 directed to the Sheriff of Kane County, which said writ has been returned executed. Now, therefore, &c., which notice is dated September 3d, 1861.

15 Publishers certificate stating that the notice was duly published in the issues of Sept. 5th, 12th, 19th and 26th, A. D. 1861, in the Aurora Beacon, which notice and certificate, were filed October 21st, 1861, and refiled March 24th 1862.

16 Oren E. Miles' motion to dismiss overruled. Judgment entered by default against Bradford S. Miles.

October 22d, 1861. General demurrer by Oren E. Miles to plaintiff's declaration and each and every count thereof.

Default as to Bradford S. Miles set aside on motion of plaintiff.

18 Plaintiffs join in demurrer of Oren E. Miles, demurrer overruled as to first count of declaration and sustained as to the balance of the counts.

Plaintiffs take leave to amend declaration.

March 24th, 1862. Default against Bradford S. Miles and judgment.

20 Rule on Oren E. Miles to plead instanter.

Default against Orrin E. Miles.

March 25th, judgment for \$434 90-100. Afterwards Bradford S. Miles enters his appearance and moves to set aside proceeding for irregularities; Court takes motion under advisement.

22 Motion sustained; leave given to plaintiffs to file amended bond and also file declaration as amended.

23 June term, A. D. 1862. June 16th, motion to dismiss suit as to Bradford S. Miles; Court to take motion under advisement.

24 June 25th, 1861. Motion by plaintiffs to anend bond and writ of attachment, return of Sheriff; granted by the Court.

29 June 26th, amended bond filed by plaintiffs, also return of summons as amended by Sheriff, as follows: "I hereby certify that I served the within writ by reading the same, upon the within named Oren E. Miles, on the 17th day of June, A. D. 1861, in the City of Aurora, and attached on the 17th day of June, A. D. 1861, lots 8, 9, and 10, in plot 4, in Hall's addition to West Aurora, June 26th, 1862; filed October 21st, 1861; refiled June 27th, 1862.

30 Motion to dismiss as to Bradford S. Miles, overruled. B. S. Miles excepts to the ruling of the Court in overruling said motion, and allowing plaintiffs to amend bond and return of writ of attachment.

31 Plaintiffs enter their motion for default and that the Court assess damages. The Court asseesse plaintiff's damages at \$440 00 Judgment for the amount and costs.

32 - Motion by defendant Bradford S. Miles to vacate judgment; motion overruled—defeneant Bradford S. Miles excepts to the ruling of the Court.

33- Bill of Exceptions—L. R. Wagner, sworn for plaintiffs, who testifies as follows: "I had a conversation with Oren E. Miles, about this note, he stated to me that the note was in fact executed one year after its date," the plaintiffs then introduced the note in evidence as follows:

\$387 07

West Aurora, Jan. 1st, 1860.

"First day of April after date, we jointly and severally promise to pay to the order of J. Goodwin & Co., three hundred and eighty-seven and 07-100 dollars, at ten per cent interest, for value rec'd.

O. E. Miles.

B. S. Miles.

This being all the evidence introduced in the cause, the bill of Exception was then and there signed, &c.

The Errors assigned are :

1st. The Court erred in not allowing O. E. Miles motion to dismiss suit.

2d. The Court erred in not sustaining the demurrer to the first count in the declaration.

3d. The Court erred in not allowing Bradford S. Miles motion to vacate all of the proceedings in whole, but only in part.

4th. The Court erred in not allowing Bradford S. Miles' motion to dismiss the case, as to him.

5th. The Court erred in allowing plaintiff to amend bond and return on writ.

6th. The Court erred in allowing judgment by default against Bradford S. Miles.

7th. The Court erred in rendering judgment against Bradford S. Miles, because it had no jurisdiction over him.

8th. The Court erred in hearing the evidence in the case without a jury to assess damages.

84 30

C. E. Moles et al

vs

J. Goodwine et al

Abstract

Filed Apr 21 1873

L. Seal