

13444

No. 13444

Supreme Court of Illinois

Rowe

vs.

Brown.

STATE OF ILLINOIS,

SUPREME COURT,

Third Grand Division.

No. 88.

Rame

vs

Brown

1887

18444

1887

In the SUPREME COURT of the State of Illinois,

APRIL TERM, A. D. 1861.

WILLIAM T. ROWE,

vs.

JAMES BOWEN.

Error to Iroquois.

RECORD
PAGE.

Property of plaintiff was attached by sheriff of Iroquois county, Illinois, as the property of other parties.

2, 3, 4, 5 August 19, A. D. 1859, plaintiff made a demand of said sheriff in writing, for a trial of right of property in said property attached, and gave security for costs as required by statute.

6 Trial of right of property was had before said sheriff, and verdict of jury, filed September 3rd, A. D. 1859, gave larger portion of property to plaintiff.

8, 9, 10 Both parties entered motion for appeal to Circuit Court of Iroquois county, Illinois, and each party filed appeal bond.

13, 14 At February term of said Circuit Court, A. D. 1860, plaintiffs filed petition for change of venue, which was denied by the court.

15, 16, 17 On 29th day of February, A. D. 1860, trial was had in said court, and verdict rendered for defendant; and judgment for defendant for costs.

The following errors are assigned:

1st. That there is no such Court as sheriff's court known under the constitution.

2nd. That all the proceedings had in this cause in the Court below were *coram non judice*, and void.

3rd. The Court below erred in sustaining jurisdiction of said Court.

4th. The Court below erred in entering judgment against said plaintiff in favor of said defendant, instead of dismissing said pretended suit, such suit having been commenced in a court unconstitutional.

HOSMER & PECK,

Attorneys for Plaintiff in Error.

Rowe
vs- No 88
Bowen.

Abstract-
— " —

Kosmer Fleck
for Plff. in error.

In the Supreme Court
of the State of Illinois
April Term A.D. 1860.

William L. Rowe
vs.
James Brown

Page of Rec.

Property of plaintiff not attached
by Sheriff of Kankakee County Ills.
on the property of other parties.

2345. August 19th A.D. 1860, Plaintiff
made a demand of said Sheriff
in writing for a trial of right
of property in said property
attached and gave security for
costs as required by Statute

6 Trial of right of property was
had before said Sheriff, and
verdict of jury filed September
3rd A.D. 1860, gave larger portion
of property to Plaintiff

*910 Both parties entered motion
for appeal to circuit court
of Snohomish County ^{Ills.} and
each party filed appeal bond,

13th 14th At February Term of said
Circuit Court A.D. 1860, Plaintiff
filed petition for change of venue
which was denied by the Court,

14th 16th 17th On 29th day of February A.D.
1860, Trial was had in said
Court & Verdict rendered for
defendant

The following is a copy of the
assignment of errors on the back
of said Record.

1st That there is no such court or Sheriff's
Court known under the Constitution

2nd That all the proceedings had in this
case in the Court below were
coram non Judge and void,

3rd The Court below were in entertaining
jurisdiction of said suit

4th
11

The court below erred in rendering judgment against said plaintiff in favor of said defendant in case of dismissing said pretenses. Such suit having been commenced in a court unconstitutional.

Washington Coolidge & M^cNeil
Attorneys for Plaintiff in error

842 88
Rowe vs Bowen
Abstract &
Errors

Filed May 12, 1860
A. Deland
Clerk.

Howe

v

Bowen

Opinion by Catron ch. J.

We have with some reluctance come to the conclusion that the New Constitution nullified the law authorizing the trial of the right of property before the Sheriff. If that be a judicial proceeding then it cannot be tolerated under the present Constitution for all of the judicial power of the State is confined to the specified tribunals. And we are constrained to the conclusion that it is and was by the legislature assigned to be a judicial proceeding and it has in effect been repeatedly so decided by this Court. When property which has been levied upon by the Sheriff is claimed by a third party the Sheriff is required to summon a jury to try before him whether the property belong to the claimant. At this trial the Sheriff presides he issues subpoenas for & swears the witnesses, he may preserve order and punish for contempt and an appeal may be taken to the Circuit Court from the decision before him. The Sheriff makes up a bill of costs & collects them. Although no formal judgment is rendered upon the verdict of the jury, yet he enters the verdict which is then treated as a judgment at least for the purposes of an appeal and also for the purpose of protecting the Sheriff from an action for having taken the property wrongfully. Now if this is not in every respect in form a judicial proceeding it is so at least in substance and so it has been regarded by this Court.

In *Wren v. Reiche* 1 Com 340. The Court
collected this proceeding a judgment and
held it to be a substantial conclusion as to the
right of property between all the parties
and their privies. There are several
other cases in our reports ~~there~~ where this
view of the proceeding has been recognized.
though perhaps none other where it has been
so expressly affirmed. If the finding upon the
trial before the Sheriff, or on appeal before the
Circuit Court, be binding and conclusive
upon the parties, then it is res. judicata. And
we think such must have been the intention
of the Legislature, rather than that it should have
been an idle ceremony. If the determination
of the matter before the Sheriff is not conclu-
sive, ~~if it is~~ between the parties, if it is not
res. judicata, what is it? It must be one thing
or the other. It must be something or nothing.
If it has any force & effect whatever, if it con-
cludes any body for any purpose where
shall we stop short of making it conclusive
between parties & privies to that proceeding,
and if we give it this effect then we
make it substantially a judgment and
the proceeding is consequently a judicial
proceeding.

As the Sheriff had no jurisdiction the
Circuit Court could acquire no juris-
diction by virtue of the appeal.

Although the judgment of the Circuit Court
was in fact void for the want of ~~pro~~ ~~pro~~
jurisdiction we may nevertheless reverse it
if we choose for the purpose of disposing
of what appears to be a judgment.
The judgment is reversed.

88-37

Rowe

~

Bower

Opinion

Caton

Book file

Frid Nov. 23. 1861

L. Leland

✓ Clerk

Page 630

Compared

STATE OF ILLINOIS, }
SUPREME COURT, } ss.

The People of the State of Illinois,

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

Because, In the record and proceedings, as also in the rendition of the judgments of a plea which was in the Circuit Court of Iroquois County, before the Judge thereof, between William T. Rowe

plaintiff, and James Bowen

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

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

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 26th day of May in the Year of Our Lord One Thousand Eight Hundred and Sixty.....

L. Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy

William T. Rowe

No.

88.

U.S.

James Bowen

WRIT OF ERROR.

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

L. Leland

By J. N. ^{Gleek.} *[Signature]*

FILED

May 26.

A. D. 1864

L. Leland

Bleck.

S U P R E M E C O U R T ,

A P R I L T E R M , 1 8 6 1 .

WILLIAM T. ROWE,
Plaintiff in Error,
vs.
JAMES BOWEN,
Defendant in Error.

} Error to Inquisition

P O I N T S A N D A U T H O R I T I E S F O R P L A I N T I F F I N E R R O R .

The sheriff's court was abolished by the new constitution.

Old constitution, Sec. 1, Article 4, Purple's Stat., p. 37: "The judicial power of this State shall be vested in one Supreme Court, and such inferior courts as the General Assembly shall, from time, to time ordain and establish."

See statute giving trial of right of property before sheriff. (Purple's Stat., p. 1026).

The new constitution, Article 5, Sec. 1, Purple's Stat., p. 57, provides that "The judicial power of this State shall be and is hereby vested in one Supreme Court, in Circuit Courts, in County Courts, and in Justices of the peace."

The trial of the right of property is conclusive between the parties and privies, and can be used as evidence against them in another suit.

Arenz v. Reihle et al., 1 Scam. 342.
Cassel v. Williams, 12 Ill. 389.

The trial of the right of property has been recognized by the Supreme Court as a trial at law, and the tribunal as a court.

Pearce et al. v. Swan, 1 Scam. 269.

Article 5, Sec. 1, of the new constitution, has been construed to deprive mayors of cities of judicial power.

State ex rel. v. City of Rockford, 14 Ill. 420.
Beesman v. City of Peoria, 16 Ill. 484.

Appearance and consent give jurisdiction over the person.

Duncan et al. v. Charles, 4 Scam. 561.

But not over the subject matter.

Leigh v. Mason, 1 Scam. 249.
Williams et al. v. Blankenship et al., 12 Ill. 122.

Circuit Court has no original but only appellate jurisdiction in the trial of right of property. Purple's Stat. 1026.

If the Circuit Court has original jurisdiction of the subject matter, upon an appeal, appearance gives the Circuit Court jurisdiction whether the court below had jurisdiction or not. But it takes nothing by the appeal.

Randolph Co. v. Ralls, 18 Ill. 30.
Allen v. Belcher, 3 Gilm. 594.

But where the Circuit Court has no original but only appellate jurisdiction, consent can give none; it must be by appeal, and to acquire it by appeal, the court below must have original jurisdiction.

Ginn v. Rodgers, 4 Gilm. 131.
Beesman v. The City of Peoria, 16 Ill. 484.
Allen v. Belcher, 3 Gilm. 596.

Hosmer & Beck -
for Plff - in error -

Rowe
vs No 88
Bower -

Points & authorities
for
Plaintiff in error

Hosmer & Rich
for Plff. in error

Know all Men by these Presents, That Mr William
T. Rowe

as principal, and

Foster Moore as security, are held and firmly bound
unto James Bowen

in the penal sum of three hundred dollars
good and lawful money of the United States, for the payment of which, well and truly
to be made, the said Rowe & Moore

bind themselves, their heirs, executors and administrators,
jointly, severally and firmly by these Presents.

Witness, the names & seals of said Rowe &
Moore

this 9 day of May A. D. 1860

The Condition of the above Obligation is such, That, whereas the above named
James Bowen

did, at the February Term of the Circuit Court,
held in and for the County of Coyne in the
State of Illinois, A. D. 1860 recover a judgment against the above bounden

William T. Rowe

for the sum of his costs
& charges expended in said suit
said William T. Rowe to reverse which said judgment, the

has sued out a Writ of Error from the Supreme Court, within and for the Third
Grand Division of said State, which Writ of Error is made a Supersedeas. Now if the
said Rowe

shall duly prosecute said Writ of Error, and pay, or cause to be paid, the amount of said
judgment, and all judgments, costs, interest and damages which the said Supreme Court
shall adjudge against him

and abide the order and judgment of said Su-
preme Court in this behalf, then this obligation is to be void, otherwise to remain in full
force and effect.

Wm T Rowe [SEAL.]

Foster Moore [SEAL.]

[SEAL.]

[SEAL.]

No. 88

SUPREME COURT,

THIRD GRAND DIVISION.

William T. Rowe

vs.

James Bowen

SUPERSEDEAS BOND.

Filed May 26th 1860.

L. Island Clerk.

State of Illinois

Jackson County ss

The People of the State of Illinois to all to whom these presents shall come Greeting:

Know ye that we having caused to be inspected the Records and proceedings in the office of the Clerk of the Circuit Court of said County do find therein certain Records and proceedings in words and figures following to wit:

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

Now before the Honorable Charles R Starr Presiding Judge of the Twentieth Judicial Circuit and Presiding Judge of the Jackson County Circuit Court in the State of Illinois, at a term of said Court begun and held at the Court House in Middleport in said County and State aforesaid on the Third Tuesday (the same being the Fifteenth day) in the month of November in the year of our Lord one thousand eight hundred and fifty nine and of the Independence of the United States of America the Eighty fourth.

Present Hon Charles R Starr Presiding Judge of the Twentieth Judicial Circuit
Charles J. Beattie States Attorney

"Theodore Ayres Sheriff of Ingham County,
"Thomas Beunum clerk of the Circuit Court."

Be it remembered that heretofore to wit on the 17th day of September in the year of our Lord one thousand eight hundred and fifty nine, there was filed in the office of the Clerk of the Circuit Court of said County, certain papers on an appeal from Theodore Ayres Sheriff of said County sitting as a Court, for the trial of the right of property, consisting of a Notice to said Sheriff, two bonds for costs ~~to be paid for a jury~~, a verdict of said Jury two appeal bonds and an transcript of the proceedings had before said Sheriff, And the said Notice to the Sheriff as aforesaid reads in words and figures following

Middleport August 29th 1859
To Theodore Ayres Sheriff of Ingham County, State of Illinois: Sir. Please take notice that the Bay horse both hind feet white, "One Gray Horse, a Stallion one small white horse, And one dark bay horse, one Two Horse covered Hack, one Iron Aile Hack, one set of double Harness, Two Bridles and one Realter; altogether about the value of Three Hundred and fifty Dollars, which you hold by virtue of a levy in attachment & judgment thereon

in favor of James Bowen, and against the property of Thomas
H Rowe and Martin O Rowe and which you hold subject
to sale, is not, and was not the property of the said Thomas
H Rowe and Martin O Rowe; But was my property. before
+ at the time of said levy, since and now is my property,
and that I am lawfully entitled to the possession of the
same, and intend to prosecute my right, and ask you
impanel a jury to try my right to the same, as provided
by the Statute of Illinois.

Wm. T. Rowe

And on the back of said notice is the following endorsement

"William T Rowe vs James Bowen. Notice".

"To Theodore Ayres Sheriff of Ingham County State of
Illinois. Served the within notice on the within named
Theodore Ayres, Sheriff this day of August A.D. 1859."

"Filed Sept 17th 1859."

"Thomas Deunum Clerk"

And the bonds for costs read in words and figures following
State of Illinois

Ingham County ss Before Theodore Ayres Sheriff of
Ingham County sitting as a Court
in the trial of Right of Property - in the following case viz:

William T Rowe {

vs

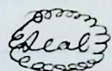
James Bowen }

Trial of the Right of Property

I do hereby enter myself security for costs in this Cause and acknowledge myself bound to pay or cause to be paid; all costs which may accrue in this action either to the opposite party, or to any of the officers of this Court, in pursuance of the Laws of this State.

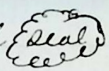
Dated this 29th day of August

Wm. F. Rowe



AD 1859.

John. L. McConnell



and on the back of said bond is the following endorsement

To "Wm F Rowe vs James Bowen,

"Trial Right of property, Security for costs,

"Filed Aug 29th 1859. F Ayres Sheriff.

"Filed Sept 17th 1859. Thomas Vennum clerk"

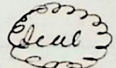
Second bond.

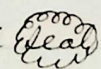
Know all men by these presents that I William F Rowe and John McConnell are held and firmly bound unto Theodore Ayres Sheriff of Ingham's County and State of Illinois, and James Bowen in the sum of Two Hundred dollars lawful money of the United States for the payment of which well and truly to be made we jointly and severally bind ourselves our Executors and administrators & heirs, as witness our hands and seals this 29th day of August AD 1859.

The Condition of the above obligation is such that whereas the above bounden William F Rowe is about to give

notice to said Ayres, that he claims the right of property in and intends to prosecute his right to the following described property, in possession of said Ayres, taken as the property of Thomas H Rowe and Martin H Rowe at the suit of James Bowen, and he the above bounden Rowe being a non-resident of the State of Illinois, being as such required by the Statute of Illinois to file his security for costs in accordance therewith files security, for all costs in said trial of the right of property and he acknowledges himself as well as does the said John Mc Connell bound to pay, or cause to be paid, all costs which may accrue in the trial of said right of property, either to the opposite party or to any of the officers of said Court witnesses or jurors. The property being one Bay Horse both hind feet white, One ^{a stallion} Grey Horse, one small white Horse, and one dark Bay horse; One two horse covered hack, one iron axle hack; one set double harness Two Bridles & one Halter. Said bond to be null and void on discharge and satisfaction of whatever costs may legally devolve upon him the said Rowe to pay, otherwise of force and effect.

August 29th 1859.

Wm H Rowe 

John L Mc Connell 

and on the back of said bond is the following endorsement, "Wm H Rowe vs James Bowen Bond for Costs, Trial of Right of property Bond accepted & filed

"Aug 29th 1859 J Ayres Sheriff"

"Filed Sept 17 1859"

"Thomas Vennum clerk"

and the verdict of the jury reads as follows

"State of Illinois

Grroquois County ss We the jury summoned by the Sheriff
of the County and State aforesaid to try a cause pending
between William T Rowe claimant and James Bowen
defendant for the Rights of property find the Iron Gray
Station the Gray Horse, the small white horse and the
Dark Bay horse, also the heavy two horse Hack with Iron
Axletrees and the harness to be the property of the Claimant
William Alderman, Joseph Zumwalt, Wesley Hutchins
Josiah Keedge, Ralph Sleeth, John. le Kesir
Jeremiah Keel, John Zumwalt, Thomas Yates
Silas Smith, Charles Keongland, Isaiah Hutchinson"

and on the back of said verdict is the following endorse-
ment, "W. T. Rowe vs James Bowen, Verdict of
Jury, filed Sep 3rd 1859, J. T. Ayres Sheriff"

"Filed Sept 17 1859 Thomas Vennum clerk."

And the transcript of proceedings before the said Sheriff
reads in words and figures following to wit:

William F Rowe } Trial of Rights of property before
vs } Theodore Ayres Sheriff of Ingham County
James Bowen } Ill,

Aug 29th 1859 issued jury warrant. Returned served Sep
2nd. Sept 1st issued subpoenas for both parties.
Sept 2^d Being the time appointed for trial in the above
entitled cause and the parties to the suit being present
the Court proceeded to call the jury and the following jurors
and answered to their names

Josiah Hedge, Robert Danner, John Zurnwalt
Mr. B. White, B. F. Masters, Saml Keene
Hosea F Kendall, Joseph Zurnwalt, N Alderman
Robert Hall, R Sleeth Thomas Yates
Robert Danner and Hosea F Kendall were excused from
serving on jury on ^{the} ground of not being householders

Robert Hall, Mr B White, & Saml Keene were excused
by the Court. The following persons were called as
Talisimen. Jeremiah Hoel, J. W Lawrence, Joshua Dean
Mariah Hutchinson Charles Hougland, Nathan Page sen
Geo Hoyle John Kiser, Wesley Hutchinson &
Silas Smith, J W Lawrence & Geo Hoyle were
rejected by the claimant. Joshua Dean was rejected by
the defendant and Nathan Page sen was excused by the
Court - leaving jury standing as follows on commencement
of trial. Josiah Hedge, John Zurnwalt, Jeremiah Hoel

Isaiah Hutchinson, Wesley Hutchinson, Joseph Zumwalt
Wm Alderman, Ralph Sleeth, Thomas Yates
John Kesir, Charles Hoagland & Silas Smith

The jury was after being accepted as above duly
sworn

The following named witnesses were called on the
part of the claimant and duly sworn, Geo Hoagle, Wesley
Hutchinson, & N H Hoaggard, & Samuel Swartz on
the part of the defendant, R Sleeth, Geo Hoagle, Wesley
Hutchinson, Isaiah Hutchinson and W. B White,

The examination of witnesses continued until half past
five o'clock P. M, when the court adjourned to 9 o'clock
A. M. Sept 3rd 1859.

Sept 3rd Court convened at 9 o'clock A. M. after a
thorough examination of the matters in controversy, the jury
retired and after an absence of several hours returned
with the accompanying verdict duly signed by each juror.

After the announcement of the verdict both parties
requested to have a motion entered for an appeal to the
Circuit Court of Ingham County. Each party filed
appeal bond which was duly approved and which accom-
pany these proceedings, to the correctness of which I do hereby
certify.

September 8th 1859. Theodore Ayres Sheriff.

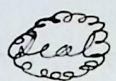
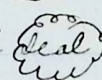
And on the back of said transcript is the following endorsement, "Wm F Rowe vs James Bowen"
 "Transcript. Filed Sept 14 1859. Thomas Bennum clerk."

And the said William F Rowe's appeal bond reads in words and figures following

Know all men by these presents that we Wm F Rowe are held and firmly bound unto James Bowen in the penal sum of One Hundred and twenty five Dollars lawful money of the United States for the payment of which well and truly to be made we bind ourselves, our heirs administrators and assigns jointly severally and firmly by these presents, witness our hands and seals this day of September AD 1859.

The Condition of the above obligation is such that whereas the said James Bowen did on the 3rd day of Sep AD 1859 before Theodore Ayres Sheriff of Ingham's County Ill recover a judgment against the above bounden Wm F Rowe for the delivery of a Two Horse Hack known as the Hoyle Hack and one bay horse known as the Hutchison horse, on a trial of the Rights of property wherein the said Wm F Rowe was claimant and James Bowen was defendant from which judgment the said Wm F Rowe has taken an appeal to the Circuit Court of the County of Ingham and State of Illinois Now if the said Wm F Rowe shall prosecute his appeal with effect and without delay, and pay all costs that have accrued

or may come on such appeal if judgment be given against him in the Circuit Court, then the above obligation to be void otherwise to remain in full force and effect.

taken and approved before me Wm F Rowe 
this 6th day of September John L McConnell 
AD 1859.

Theodore Ayres Sheriff.

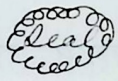
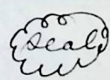
And on the back of said bond is the following endorsement.
"Wm F Rowe vs James Bowen" "Appeal Bond Approved
and filed Sep 6th 1859. Theodore Ayres Sheriff"

and the said James Bowen's appeal bond reads in words and figures following to wit:

Know all men by these presents that
we James Bowen and are held and firmly bound
unto William F Rowe in the penal sum of Two Hundred
Dollars lawful money of the United States, for the payment of
which well and truly to be made, we bind ourselves, our heirs
and administrators, jointly, severally and firmly by these
presents. Witness our hands and seals this 8th day of
September AD 1859.

The condition of the above obligation is such, whereas the
said William F Rowe did on the third day of September
AD 1859 before Theodore Ayres Sheriff in & for the County of

Iroquois recover a judgment against the above bounden James Bowen on trial of the right of property for a portion of the property then & there in controversy Cents and costs of suit, from which said judgment the said James Bowen has taken an appeal to the Circuit Court of the County of Iroquois aforesaid, and State of Illinois. Now if the said James Bowen shall prosecute his appeal with effect, and shall pay whatever judgment may be rendered by the Court, upon dismissal or trial of said appeal, then the above obligation to be void, otherwise to remain in full force and effect.

Taken and approved by me this James Bowen 
Eighth day of September AD 1859, Micajah Stanley 
Theodore Ayres Sheriff
B & E Chapin Dept.

And on the back of said bond is the following endorsement
Appeal Bond, To Iroquois Circuit Court, Wm S Rome
vs James Bowen, Appeal by James Bowen,

Accepted and filed September 8th AD 1859.

Theodore Ayres Sheriff

Filed Sept 17 1859

Thomas Bauman clerk

And afterwards to wit on the first day of December in the year of our Lord one thousand Eight Hundred and fifty nine it being one of the regular days of the November Term of the Ingham County Circuit Court for the year last aforesaid the said Court being then duly organized and sitting as a Court for the transaction of business certain & other proceedings were had and entered of Record by the said Court in words and figures following to wit:

123 William P Rome
vs
James Bowers

Appeal from Sheriff's Court

This day comes the Plaintiff by Washington and McNeill his attorneys and comes also the defendant by James H. Blades his attorney, on whose motion it is ordered by the Court that ~~an writ of attachment~~ for contempt of Court issue for George Hoyle, and by the agreement of the parties it is ordered by the Court that this cause be and the same is hereby continued till next term.

And afterwards to wit on the 22nd day of February A.D. 1860 a Petition for change of venue was filed & in the above cause which reads in words and figures following to wit.

"Ingham County Circuit Court"

State of Illinois

"Of the February Term A.D. 1860"

Ingham County ss

William F. Rowe

vs

{ Appeal

James Bowen

To the Honorable Charles R. Starr
Judge of the Twentieth Judicial Circuit of the State of Illinois
and Judge of the Circuit Court of the County of Ingham,

Your petitioner William F. Rowe would most respectfully show unto your honor that he your petitioner believes and fears that he cannot have a fair and impartial trial before your honor in the above entitled cause in this court, on the account of the prejudice of this court against your petitioner, and further your petitioner prays that your honor will change the venue in this cause to some circuit where such prejudice does not exist.

Wm F Rowe

State of Illinois

Ingham County ss

William F. Rowe being duly sworn deposeseth and says that he has heard the foregoing petition read and understands the contents thereof, and that he believes the same to be true.

Subscribed and sworn to before me this { Wm F Rowe
22nd day of February 1860 {
Thomas Benjamin Clerk

and on the back of said Petition is the following endorsement:

"Wm F Rowe vs James Bowen. Petition for
"change of venue by Plff.

"Filed Feb 22nd 1860. Thomas Vennum clerk."

And afterwards to wit on the 22nd day of February in the
year of our Lord one thousand Eight hundred and
Sixty it being one of the regular days of the February Term
of said Circuit Court for the year last aforesaid and the
said Court being then duly organized and sitting as
a Court for the transaction of business, certain other
proceedings were had and entered of Record by said
Court in words and figures following to wit:

" William F Rowe {
" vs { Appeal from Sheriff Court on trial
" James Bowen { of right of property.

This day comes the said Plaintiff into
" Court in person and by Whitman Washington and
" McNeill his attorneys and files his Petition verified by the
" affidavit of the said Plaintiff and enters his motion to
" the Court for a change of venue in this cause from this
" Circuit, And the Court after hearing the argument
" of counsel upon the motion, and being advised in the

" premises, ordered that the Petition for a change of Venue
" be and the same is denied. And now comes the
" Plaintiff by his attorneys and enters his motion for a continuance
" in this cause till next term, And now come Whiteman
" Washington and McNeill attorneys for the Plaintiff into
" Court and withdraw the motion for continuance entered
" herein, and on Plaintiff's motion this cause is set for
" hearing on Wednesday morning of next week,

And afterward to wit on the 29th day of February
AD 1860 it being one also one of the regular days of the
February Term of the said Circuit Court for the year last
aforesaid, the Court being then duly organized and sitting
as a court for the transaction of business certain other
proceedings were had and entered of Record in said Court
in words and figures following to wit;

" William T Rowe {
47 vs { Appeal from Sheriff's Court
" James Bowen { Trial of Right of Property
" {

And now comes the Plaintiff into
" Court in person and by Washington Whiteman and McNeill
" his attorneys, and the defendant also comes in person
" and by Josiah Blades and Fletcher his attorneys and
" thereupon by order of the Court came the Jurors of a Jury
" to wit, Harvey Frisbie, David Parce, Isaac Glencroft

" William Wilson, J. C. Sturdevant John Snider, James
" Robinson, Samuel Porter, James R. Smith James
" Biggs Charles McElroy and S. R. Linkinbeard Twelve
" good and lawful men who were duly empaneled and
" sworn to well and truly try this cause upon the issue joined
" between the parties, and after hearing the evidence
" adduced upon the trial, the arguments of counsel and
" the instructions of the Court, retire in charge of an officer
" to consider of a verdict, and afterward return into
" Court with the following verdict: We the Jury find for
" the defendant.

" And now comes the Plaintiff by his Attorneys and
" enters his motion for a new trial in this cause.

And afterwards to wit on the 3rd day of March AD 1860 it also
being one of the regular days of the February Term of said Court
for the year 1860 the said Court being then duly organ-
-ized and sitting as a Court for the transaction of
business certain other proceedings were had and entered
of Record by said Court in words and figures following
to wit:

" William P. Rowe {
" vs {
17 " { Appeal from Sheriff's Court on
" James Bowen { Trial of the right of property.
" {
" The motion for a new trial by the

" Plaintiff in this cause coming up for argument, the Court
" after mature deliberation ordered that the motion be and
" it is overruled, to the overruling of said motion the
" Plaintiff by his ^{attorneys} ~~attorneys then and then excepted excepts.~~
" It is therefore considered and ordered by
" the Court that the defendant do have and recover of and
" from the said Plaintiff his costs and charges expended
" in and about the defense of this suit and that he
" have Execution therefor against the said Plaintiff.

State of Illinois

Jroquois County ss

I Thomas Vennum clerk of the Circuit Court
in and for the said County in the State aforesaid do hereby
certify that the above and foregoing is a true complete
and perfect transcript of the Original papers on file in
the Jroquois Circuit Court in the cause between William
McRae Plaintiff and James Bowen defendant, and
also a true copy of the Record of the proceedings of
said Court in said ^{cause from the commencement of the suit to the} ~~above entitled~~ cause.

ment inclusive. In attestation of which I hereunto set
my name and the seal of the Circuit
Court of said County at Middleport this
22nd day of March A.D. 1860.

Thomas Vennum clerk



State of Illinois } Supreme Court
 } Third Grand Division
 } April Term A.D. 1860.

William T. Power } Pff. in Error
 } vs.
James Boram }

And now comes
the said Plaintiff and assigns the
following Errors on the Record, viz, -

1st That there is no such court as
Sheriff's court known under the
constitution

2nd That all the proceedings had in this
case in the court below were ~~Canon~~
non-judice & void.

3rd The court below erred in entertaining
jurisdiction of said suit

4th The court below erred in rendering
judgment against said Plaintiff
in favor of said Defendant instead
of dismissing said pretended suit,
such suit having been commenced
in a court unconstitutional.

Washington; Coolidge & McNeill

Assign of Error
Re filed April 16. 1861
L. Deland Clerk

Atty. for Plaintiff in Error

Let a supersedeas issue. Bond \$3000

Foster Moore Security

J. D. Eaton

Joinder in Error

April 25th 1860

Joinder in Error
Re filed April 16. 1861
L. Deland Clerk

James Blades & Fletcher
for Deft. in Error

It is hereby stipulated & agreed
that the above errors assigned
and joinder in error be and
are hereby considered as standing
in this case

April 16th

Hosmer & Peck
attys for Dft in error
James Blades
for Dft in Error

~~88~~ 88.
William P. Rowe

¹⁰⁰
James Bowen

Transcript C
Errors.

Filed April 5, 1860.
L. Leland
Clk.

Re-filed May 12, 1860
L. Leland
Clk.