No. 14745

Supreme Court of Illinois

United Express Co.

---

vs.

Bedbury

71641

14745

STATE OF ILLINOIS,

SUPREME COURT,

THIRD GRAND DIVISION.

No. 117

E. W. Middleton & Co., Stationers, 190 Lake St.

Wm E & C
vs
Bebbers
1864

STATE OF ILLINOIS, } ss. The People of the State of Illinois,
SUPREME COURT,

To the Clerk of the Superior Court ~~for the~~ of Chicago County of Cook — Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the Superior Court of Chicago — County, before the Judge thereof, between Joseph H. Bedbury

plaintiff, and the United States Express Company Garnishee of Henry H. Knight

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

as we are informed by the complaint of said defendant — 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,~~ Pinckney Harker Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 28th day of March — in the Year of Our Lord One Thousand Eight Hundred and Sixty four.

L. Leland

Clerk of the Supreme Court.

by J. B. Rice Deputy



17

The United States Express Company
Garnishee &c.
No. vs.
Joseph H. Bedbury

WRIT OF ERROR.

FILED March 28th A. D. 1864

L. Leland
Clerk.

1

2 Be it remembered, that heretofore to wit: on the Twentieth day of February in the year of our Lord one Thousand Eight Hundred, and Sixty Two, there issued out of the office of the Clerk of said Court The People Writ of Summons at the Suit of Joseph H. Bedinger against Henry H Knight which writ of Summons is returned by the Sheriff made and indorsed, following to wit:

State of Illinois
County of Cook. } ss. The People of the State of Illinois to the Sheriff of said County, Greeting

We command you that you summon Henry H Knight if he shall be found in your County personally to be and appear before the Superior Court of Chicago of said Cook County, on the first day of the next term thereof, to be holden at the Court House in Chicago in said Cook County, on the First Monday of March next, to answer unto Joseph H Bedinger, in a plea of trespass on the case upon promises to the damages of the said plaintiff as it is said in the sum of Two thousand and Fifty Dollars, And have you then, and there this Writ with an indorsement thereon in what manner you shall have executed the same

Witness Thomas B Carter, Clerk of

on said Court and the plea
thereof at Chicago aforesaid this
20th day of February A.D. 1862
Thomas D. Carter Clerk

Filed

Served by reading to the within named
Deft. H. H. Knight this 27th day of February
1862

A. C. Henry Sheriff.
A. Lechler Deputy

And afterwards to-wit, on the Twenty first day
of the Month, and year aforesaid the said Joseph
H Bidwell by Shepard & Rich his attorneys
files in the Clerks office of said Court his certain
Declaration which is in words and figures fol-
lowing to-wit

State of Illinois }
Cook County. } ss

Superior Court of Chicago
March Term A.D. 1862.

Joseph H Bidwell plaintiff in this suit by Shepard
& Rich his attorneys complains of Henry H.
Knight Defendant in this suit who is sum-
moned &c to answer the plaintiff of a plea
of trespass on the case upon promises.
For that whereas the said Defendant here-

to fore to wit on the Fifteenth day of September in the year of our Lord one thousand Eight hundred and Fifty seven. there at said town, County made a certain note in writing commonly called a promissory note. bearing date the day and year last aforesaid and there and there delivered the said Note. to the said plaintiff by which said Note the said Defendant. by the name and style of R & R Knights promised to pay to the order of the said plaintiff by the name and style of J & R Bidwell one hundred and fifteen Dollars. Six months after the date thereof for value received By reason whereof and by force of the statute in such case made, and provided the said defendant became liable to pay to the said Plaintiff 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 defendant in consideration thereof afterwards there on the same day and year. and at the place aforesaid undertook. and there and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff 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 Defendant afterwards to wit on the fifth day of February in the year one thousand Eight hundred and

per by him at the place aforesaid was indebted to the said plaintiff in the sum of One hundred and fifty Dollars lawful money of the United States of America for so much money before that time lent, and advanced by the said plaintiff to the said Defendant and at the special instance and request of the said Defendant.

And for other money by the said plaintiff before that time paid laid out and expended for the said Defendant, and at the like request of said Defendant. And for other money by the said Defendant before that time had and received to and for the use of said plaintiff And being so indebted the said Defendant in consideration thereof afterwards to wit on the same day, and year last aforesaid and at the place aforesaid undertook and then and there faithfully promised the said plaintiff well and truly to pay unto the said plaintiff the said sum of money in the count mentioned when the said Defendant should be thereunto afterwards requested.

And whereas also the said Defendant afterwards to wit on the same day and year last aforesaid and at the place aforesaid accounted together with the said Plaintiff of and concerning divers other sum of money for that time due, and owing from the

said Defendant to the said Plaintiff and then and there being in arrear and unpaid, and upon such accounting the said defendant ~~xx~~ then and there was found to be in arrear and indebted to the said plaintiff in the further sum of Two Hundred & Fifty Dollars of like lawful money as aforesaid And being so found in arrear and indebted to the said Plaintiff the said Defendant, in consideration thereof afterwards to wit on the same day and year last aforesaid and at the place aforesaid undertook, and then and there faithfully promised the said Plaintiff well and truly to pay unto the said plaintiff the said sum of money last mentioned when the said Defendant should be thereunto afterwards requested,

Nevertheless the said Defendant (although often afterwards requested &c) has not yet paid the said several sum of money above mentioned or any or either of them or any part thereof to the said plaintiff but to pay the same, ~~and~~ ~~or~~ ~~any~~ ~~part~~ thereof to the said plaintiff the said Defendant has hitherto altogether refused and still do refuse to the damage of the said plaintiff of Two hundred and fifty Dollars and therefore the said plain

7

Tiff Comp. Ont. &c.
Shepard & Reid
Pltffs Attys.

(Copy of Instrument sued upon)

$115.—

Sept. 15. 1857

Six months after date I promise to pay to the order of J. & I. Bellamy one hundred and fifteen Dollars Value received without any. relief whatever from valuation or appraisement laws.

(signed) A. A. Knight

A. A. Knight

Jr. Joseph & Isaac Bellamy Dr.

To money lent and advanced		$250
To " paid Land Ont. & Expenses &c		$250
To " Harrassment &c		$250.
To " due on the stated.		$250

8 And afterwards to wit on the Tenth day of
June in the year aforesaid, said day being
one of the days of the June Term of said Court
the following proceedings were had in said
Cause and amongst others entered of record in
Court to wit:

1390 Joseph H Bellamy }
9032. vs } Trespass
Henry H Knight }

This day came said Plaintiff by Shepard &
Rich his attorneys and the writ and plea
of precipe of summons issued in said Cause
having been had on said defendant
and he being three times solemnly called
in open Court comes not nor does any
person for him but herein he makes de-
fault which is on motion ordered to be
taken, and it is hereby entered herein accord-
wherefore, said Plaintiff ought to have
recover of and from said Defendant his
damages sustained herein by reason of
the premises and the Court now here after
hearing the allegations and proofs pre-
mised by said Plaintiff and being fully
advised in the premises assesses his damages
herein by reason of the premises against
$143.00 said Defendant to the sum of One hundred

and forty three Dollars and six cents.
Whereupon it is considered that said
plaintiff do have, and recover of and from
§ 143. ch. said Defendant, his damages of one hund-
red, and forty three Dollars and six
cents, in form aforesaid assessed, by the
Court, and also his costs and charges in
this behalf expended, and have execution
therefor.

And afterwards to wit: on the seventeenth
day of the month and year aforesaid
there issued out of the Clerks office of
said Court the People's Writ of Fieri
Facias, which Writ, with the re-
turn of the Sheriff endorsed thereon is
in these words and figures following to wit:

State of Illinois
County of Cook } ss. The People of the
State of Illinois to
the Sheriff of said County
Greeting.

We command you, that of the Lands and Tene-
ments, goods and Chattels of Henry A.
Knights Defendant in your County you
cause to be made the sum of one hundred
and forty three Dollars and six cents, which

3

10 Joseph A. Bradley. Plaintiff lately in the Superior Court of Chicago of said County at a term thereof, began, and held at Chicago in said County on the first Monday of April instant recovered against the said Defendant and which by the said Court was adjudged to the said Plaintiff for his damages. And also the further sum of Seven Dollars and fifteen Cents which were adjudged to the said Plaintiff for his costs and charges in that behalf expended, whereof the said Defendant was convicted as appears to us of record. And have you these moneys ready to render to the said plaintiff for his damages and costs aforesaid and make a return of said Writ into our said Court at the City of Chicago in said County the 17th day of April A.D. 1867

Dew.

Thos. B Caldwell Clerk

11.

(Return and endorsement of Sheriff)

Rec^d July 8^th at 4 p m 1862.

I return this Execution no property found in my County and no part satisfied this 15^th day of July 1862

Anthony C. Young Sheriff
By John A Nelson Deputy

4

12 And afterwards to wit: on the ninth day of December in the year A.D. 1863. said day being one of the days of the December Term of said Court. the following proceedings were had in said cause and amongst others entered of record in said Court to wit:

Joseph H. Bebout

vs

The United States Express Company Garnishee of Henry H. Knight

Motion

And Now comes the said plaintiff by W.B. Rob his attorney. and shows cause against the order nisi entered herein on the 28th. day of November 1863. and files his affidavit and reasons and moves to set aside said order. and also that the further proceedings stand for hearing.

And afterwards to wit on Eighteenth day of June A.D. 1864 said day being one of the days of the June Term of said Court the following proceedings were had in said cause, and amongst others, entered of record in said Court.

Joseph H. Bidwell.

vs. Garnishee process order,

The United States Express

Company Garnishee of Henry A. Knight

And now upon this day comes D. H. Hammond Sheriff of Cook County, by W. B. Rich his attorney and due notice of one day having been given to the United States Express Company, the said plaintiff appearing by said W. B. Rich his attorney and the said Company defendant appearing by Baker & Dunlee its attorneys and move the Court for leave to amend his return upon the Summons issued upon the said Company defendant in said cause so as to show that the President of said Express Company was not at the date of the service of said Summons a resident of said Cook County, and by inserting therein the date of the service thereof, and also for leave to amend his return on the writ of fieri facias in said cause so as to show that the President of said Company was not at

the date of sureties thereof. a resident of said County; and upon due hearing of the parties by the Court. It is ordered, that the said Sheriff have leave to amend said return in the manner aforesaid, conformably to the facts.

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15

(Return of Summons as amended

The President of the said United States Express Company not residing in my County on the 24th day of July 1863 I on that day served on the within named the United States Express Company as Garnishee by reading and delivering a Copy thereof to Harvey Colvin who is the agent of the said United States Express Company. also served the American Express Company as Garnishee by reading and delivering a Copy to James McDargo who is the agent of the said American Express Company and by delivering a copy thereof to L B Cook who is a clerk the same company the 24th day of July 1863.

Dand. P. Hammond Sheriff
By John A Nelson Depy

(Return on Scire Facias as amended

Served the writ on the within named United States express Company by reading and delivering a copy thereof to Harvey Colvin agent of said Company. the 15th day of October 1863 The President of said Express Company not residing in my County

Dand P. Hammond Sheriff
by John A Nelson Depy.

17 And afterwards Court on the Seventeenth day of the month and year of said and being yet of the April Term of said Court, the following proceedings were had in said cause, and, amongst others, entered of record in said Court Joseph H Bedney

vs

United States Express Company, Garnishee of Henry H Knight

Gar Ino-

And now come the said Joseph H. Bedney by M B Rich his attorney, and one days notice having been shown to appear by the notice filed and the affidavit of Daniel Shepard thereon the said Garnishee appearing by Baker & Omlee, his attorney Now upon motion of the said Bedney it is ordered that the paper writing filed in this Court as of December 3d, 1863, purporting to be the answer of said United States Express Company, as Garnishee with the affidavit of Harvey D. Colvin agent of said Company to the truth thereof endorsed thereon be, and the same is hereby stricken from the files of this Court & appearing of record that the Plaintiff finally recovered judgment in this cause, long prior to the filing of

said pretended answer. Com. November 14th 1863. the said pretended answer was filed. prior to the final disposition of the order. nisi this Court being of the opinion that the same was impudentially and unreasonably. filed to which order. striking the said papers from the files the said Garnishee excepts. which said Exception shall stand for a Bill of Exceptions hereto

And the Clerk of said Superior Court further certify. that the above and foregoing. are true copies as of record, and on file in said Court. and further. that the only papers appearing here in the said Superior Court of Chicago (except those copied above) as a part of the record in said suit. Joseph H Bla Bury. vs. The United States Express Company on file. in this Court are the affidavit of M B Rich of July 24th 1863. The summons and return. Interrogatories to Garnishee the serve facias and return and the Bill of Exceptions and appeal bond all other papers incorporated in the Manuscript. heretofore filed up by me the said Clerk. being inserted in the Bill of Exceptions and transcribed as a part

19 of the record to be sent up by the special Praecipe of the attorneys for the United States Express Company aforesaid.

In Witness Whereof I have hereunto set my hand and affixed the seal of said Court this Twenty Fifth day of June A.D. 1864.

Thos. B Carter Clerk

3° Grand Division
Supreme Court.
117 Apl T. 1864 89
The United States
Express Company
Plaintiffs &c
vs
Joseph H. Bedbury

Writ of Certiorari &
return —
Amended Transcript.

Filed May 9. 1864.
L. Leland
Clk.

41 Clark St

Fees. $4.50
Paid by atty of
Bedbury
J. Mowder Clerk

Jameson & Morse, Printers, Chicago.

IN THE SUPREME COURT,

THIRD GRAND DIVISION, APRIL TERM, A. D. 1864.

THE UNITED STATES EXPRESS COMPANY,
GARNISHEE OF HENRY H. KNIGHTS,
Plaintiff in Error,

vs.

JOSEPH H. BEDBURY,
Defendant in Error.

AMENDED ABSTRACT.

Record of the original suit, Bedbury vs. Knights, execution and return thereof. p. p. 2 to 11 Amended record

Amended record p. p. 13–14 Leave to Sheriff to amend returns on Summons and Scire Facias

" " p. 15 Amended Return of summons in garnishee process as follows: "The President of the said United States Express Company, not residing in my county on the 24th day of July, 1863, I, on that day, served this writ on the within named, the United States Express Company, as garnishee, by reading and delivering a copy thereof to Harvey Colvin, who is the agent of the said United States Express Company; also served the American Express Company as garnishee, by reading and delivering a copy to James C. Fargo, who is the agent of the said American Express Company, and by delivering a copy thereof to D. B. Cook, who is a clerk the same company, this 24th day of July, 1863.

"DAVID S. HAMMOND, Sheriff.
"By JOHN A. NELSON, Deputy."

Record, p. 6 In the order for conditional judgment, October 7th, 1863, page 6, plaintiff comes by attorney, *and due personal service of the garnishee process having been had on the United States Express Company, garnishee.*"

Amended Return of *scire facias* as follows: p. 15, Amended record

Served this writ on the within named United States Express Company by reading and delivering a copy thereof to Harvey D. Colvin, agent of the said company, this 15th day of October, 1863, the President of said Express company not residing in my county.

DAVID S. HAMMOND, Sheriff.
By JOHN A. NELSON, Deputy.

11 Nov. 14th, 1863. Conditional judgment made final, "due personal service of the garnishee writ of *scire facias* issued on the conditional judgment in said cause having been had on said United States Express Company." P. 11.

(omit) 12 ~~Amended Record, Dec. 1, 1863. Pff below should cause against ater this~~

36 Mr. Beckwith's affidavit states that he was retained by the United States Express Company to appear and answer in the suit against said express company, summoned as garnishee in this suit.

38 Colvin's affidavit states "that he was agent of the United States Express Company; that on the 24th of July, 1863, the said express company was summoned as garnishee in this cause, to appear on the first 39 Monday of August;" "that immediately upon said writ of *scire facias* being served upon said United States Express Company, affiant retained and employed C. Beckwith, Esq.," &c.; that affiant, relying upon Beckwith, &c., "gave no further attention to the same, not supposing it was 40 necessary for him so to do;" that at the time he retained Beckwith in said suit, "he, this affiant, informed Mr. Beckwith he was about leaving for New York, and should be absent some weeks, and this affiant did leave for New York, and was absent some *four* weeks."

45, 47 Mr. Rich's affidavit states that he was attorney for plaintiff below; that at the time of taking final judgment he was informed of another party indebted to Knights, where he could secure the debt against original defendant, but relying on the final judgment vs. the garnishee, and that the garnishee was indebted to Knights in amount of judgment, affiant declined to garnishee another party; that since he learned of the order *nisi*, he immediately inquired in regard to the new party proposed to be garnisheed, and was given to understand, and believes it to be true, that the said party proposed to be garnisheed had paid all he owed said Knights; that had the garnishee in this suit answered that he was not indebted, seasonably, he should have issued another garnishee process, and believes he should have secured the whole or a large part of debt due pl'ff below; that he believes Knights keeps no property subject to process, and is insolvent, but is informed and believes that for some years past he has been in the employ of said United States Express Company on large salary, and still remains in such employ, on such salary, payable monthly, or as Knights may require payment; that neither he nor Bedbury had actual or constructive notice of the making said motion to set aside and vacate said judgment by said express company, nor knew that the motion had been or was to be made, until after it had been granted, nor until after the adjournment of the November term, and that at no time have they, or either of them, been served with the affidavits or copies thereof used in support of said motion. Sworn and filed Decem-

ber 9th, with reasons, when both parties appeared, and plaintiff showed cause.

12 amended record

17-18 do. The court below struck the pretended answer of the garnishee from the files—to which garnishee excepts.

HERBERT, RICH & SHEPARD,
Attorneys for Defendants in Error.

Supreme Court
Third Grand Division

The United States Express Company,
Garnishee etc.

vs

Joseph H Bedbury

Amended Abstract

Filed Nov. 1864

Herbert, Rich & Shepard,
Attorneys for Defts in Error

United States Ex. & Co. vs Redbourn -

A difference of opinion exists between the counsel for the parties. The plff in Error thinks he is wrongly here in error and thinks that appeal is his remedy while the deft in Error counsel take the opposite view; and with a view of disincumbering the record never to dismiss the appeal - It is true no appeal has been entered & if the joinder of error is on the appeal there is a very clear that the appeal is defective and should be dismissed for we should not be compelled to join in error on a defective appeal.

The plaintiff below is entitled to the benefit of his judgment unless he is regularly superseded. and here by an unwarrantable use of the appeal he has been superseded in his judgement. We wish the appeal dismissed to avail ourselves of our bond for the collection of our judgment. The plaintiff in error declines apparently to prosecute his appeal and we are entitled to have it dismissed for having availed himself of error the two will not lie upon the same record.

Perhaps it is immaterial to the Defts ~~Plaintiff's~~ case whether the Error goes up on appeal or Error but certainly the Pltff should be compelled to elect. This election Plaintiff in Error has made. and in making it he should dismiss his appeal, both will not lie at least we cannot be compelled to join in Error in each and are entitled to know on which we join.

The appeal being in this Court irregularly here the defendant in Error out of abundant caution and to avoid himself of his God power, that the appeal may be dismissed — before proving in Error + will out dismissal join issue —

With regard to the Motion. There could be no subscription of the Commission Error was joined. and Error could not be properly joined till the record was here in full. The writ of Certiorari was pending & not returned therefore there could be no issue or subscription. The record not being here it would appear to be the right of the Defen-

to be heard in the cause which
has been this irregularly submitted

Herbert Rickert Shepard

Attorney for Defendant

117 89

The United States
Express Co
vs
Saunders
Joseph H. Bedbury

Proof for certain 19
allowed
22 and by July
taken on each 28

Reasons on
motion —

Filed May 9. 1864.
L. Leland
Clk

Hubert Richards
Shelpard for Rebar

Jameson & Morse, Printers, Chicago.

IN THE SUPREME COURT,

THIRD GRAND DIVISION, APRIL TERM, A. D. 1864.

THE UNITED STATES EXPRESS COMPANY,
GARNISHEE OF HENRY H. KNIGHTS,
Plaintiff in Error,

vs.

JOSEPH H. BEDBURY,
Defendant in Error.

POINTS AND AUTHORITIES.

I.

A bad reason assigned can never invalidate a good judgment. Many a good judgment has been rendered on reasons unsatisfactory, not to say ridiculous. If these could be assigned for error, Judges would be men of few words. It is enough that the judgment is good for any reasons, or without reasons. *Morrison vs. Heaton*, 4 *Scam.*, 459.

Nov. 18th, Mr. Beckwith states, in affidavit, p. 37, that he learned a judgment had been entered. No movement is made to set it aside until the last day of the term, at 2 p. m.,—nearly two weeks after.

"*Vigilantibus et non dormientibus jura subveniunt.*"

Had no negligence been committed up to this time, and the party had been in no contempt or default, yet the negligence after Nov. 18th is not accounted for. Toleration of this would justify any latitude of laches or indifference.

"When a judgment has been taken irregularly by default, as would appear in this case, (as is contended by plaintiff in error,) the party against whom it operates must avail himself of the first reasonable moment, after the irregularity is discovered, to correct it." ~~*Rogers vs. Hall,*~~ 3 *Scam.*, 4. Ryder vs Twist But here was no irregularity. Def't below rightly defaulted.

There is a responsible party on whom the plaintiff in error may fall back. 5 *Wend.*, 514. Not so with the defendant in error, if this judgment is set aside. He loses his debt.

But loss has accrued to the defendant in error, by reason of this negligence if the judgment be set aside. He had failed to secure his debt by new process of garnishee. *See Rich's affidavit, p.* 45, 47.

VIII.

But the court was right in saying they had not the power to make the order *nisi*. No notice had been given conformable to the rule of court. *Rich's aff't, pp.* 46–47. Also, exceptions, p. 44. This rule is reasonable, and conformable to the suggestions of this court. *Hall vs. O'Brien*, 4 *Scam.*, 409.

The court has power to make this rule. *Act Feb.* 17, 1859, *Sec.* 12; 22 *Ill.*, 171, *et seq.;* 201. It was published, Record p. 44.

"Such rules have the force of law." 22 *Ill.*, 173.

"The court can~~not~~ change, modify or rescind, but while they are in force they (the rules) must be applied to all cases falling within them. No discretion can be exercised in their application, unless such discretion be authorized by the rules themselves." 22 *Ill.*, 173.

IX.

Metcalf vs. Fents, 27 *Ill.*, 114, cited by plaintiff in error, suggests a fatal difficulty to the assignment of want of jurisdiction for error, by reason of its being a corporation or copartnership, and not a person *in rerum natura* or *vice versa*.

This was assigning error on the fact, which cannot be done. *Beaubien vs. Hamilton*, 3 *Scam.*, 214, ~~which~~ was a case *quatuor pedibus*, with this. It was assigned that plaintiff in error was an infant, instead of, as here, a corporation, copartnership or person *in rerum natura*. The court there say "that when an error in fact is committed in legal proceedings, the court in which the error is committed may correct it by a writ of error *coram vobis*, or on motion. There will consequently be no failure of justice, if the court comes to the conclusion that it possesses no jurisdiction of the question presented by this writ of error." 3 *Scam.*, 315.

X.

Plaintiffs in error should pay for additional abstract, to be taxed in bill of costs, also costs of certiorari and return which were necessary to a complete record; and of unnecessary incorporating affidavits etc in the record and bill of exceptions.

XI.

Not error to strike pretended answer from the files. *Tidd's Prac.*, 658; *Williams vs. Corbett*, 28 *Ill.*, 263; 2 *Scam.*, 286; 3 *Scam.*, 546; 4 *Scam.*, 301; 14 *Ill.*, 278; 2 *Gilm.*, 734; 20 *Ill.*, 557; *Wyatt vs. Hendrick*, 21 *Ill.*, 158.

HERBERT, RICH & SHEPARD,
Atty's for Def'ts in Error.

Supreme Court 117 89
Third Grand Division

The United States Express Company
Garnishee &c

vs

Joseph H Bradbury

Points & Authorities
for Defendant

Filed May 10. 1864
S Sciarelli Clk

Herbert, Rich & Shepard
Attorneys for Defts in Com.

Supreme Court of Illinois
Third Grand Division April T. 1864
The United States Express Company Plaintiff
vs
Joseph H. Redbury.

And now the said defendant Joseph H Redbury moves the Court to dismiss the Subumpsion of said cause on the part of the plaintiff in Error. because at the time of said subumpsion a writ of Certiorari had been ordered & was not returned. and no full & perfect record had been transmitted from the court below. & no Error was found. And the said defendant further moves that the appeal in said cause be dismissed or the appeal & record that the same was improvidently allowed by the court below at a term subsequent to the rendition of the final judgment. The judgment by reason of the November T. 1863 and the appeal at the December T. succeeding of the court below.

By Hebert Richardson
his Attorneys

Record p. p. 11. 12.
p. p. 31. 32

The United States
Express Co. Garnishee
vs.
Joseph H. Bedbury.

Motion to set aside
the submission &
to dismiss the appeal.

Filed day 9. 1864.
L. Leland
Clk.

Herbert Richardson
Defts attorneys.

State of Illinois } Supreme Court
3rd Grand Division } April Term 1862
County of Cook ss }

The United States Express Company }
Garnishee of } Error to the
Henry M Knights } Superior Court
vs } of Chicago
James M Bradbury }

M. Byron Rich of said County being duly sworn deposes & says that he has examined the Summons and Scire Facias on file in said cause in the Superior Court and also the records of said Court below and finds the return upon said Summons now to contain the following words not contained in the Manuscripts on file in this Court herein "The President of the said United States "Express Company not residing in my "County on the 24th day of July 1863 "I on that day"; also finds the return on the Scire Facias now to contain the following words not contained in the said Manuscripts herein: "The President "of said Express Company not residing "in my County" and that the word "Agent" in said return appears where the word "Superintendent" appears

therein in said Transcripts, the said returns having been amended by the Sheriff of Cobb County by leave of said Superintendent and that I have found in said Examination of the records aforesaid that all the proceedings of the 9th day of December 1863 by which it appears that the said B & Bury on that day appearing and showed cause & filed the affidavit of this affiant has been omitted in said Transcripts and also that the paper writing purporting to be the answer of the said Company the United States Express Company & the affidavit appended thereto have been by order of said Court below stricken from the files

M. B. Rich

Subscribed & sworn to this
20th day of April A.D. 1864
before me
Thomas J. Carter
Clk

U.S. Ex Co
Jas. Hutchinson
No 113
Affidavit Attorneys

Filed April 21, 1864
L. Clerk
Clk.

State of Illinois } In the Supreme
Third Grand Division } Court of the
April T. 1864.

The United States Express Company, garnishee
of Henry H. Knight : Plff in Error

vs

Joseph H. Redbury Defendant in Error.

And now the said Joseph H. Redbury comes & suggests to the Court here that in the transcript of the record returned in this case there are certain defects as follows. Viz

(1) The clerk has not entered on the transcript of the record a transcript of the judgment in the original suit Joseph H. Redbury vs Henry H. Knight returned to the the September T. A.D. 1863.

(2) The clerk has omitted to enter on the transcript all the proceedings of December 9th 1863 and of the days of the December term.

(3) The transcript does not contain a full & perfect copy of the returns on the Summons and on the Scire Facias —

(4) The following papers are improperly evidence in the transcript being no part of the record below.

The notice of motion & motion filed and the affidavits of Beckwith & Colvin filed Nov. 28th 1863.

The pretended answer of the defendant below filed Dec 3. 1863 with the affidavits appended thereto.

The affidavit of M. B Rich filed Dec 9. 1863.

Wherefore the said Joseph H Bradbury prays the allowance & writ of certiorari for a true transcript of the record & the proceedings of the court below.

By M. B. Rich his attorney

No 117

The U.S. Ex. Co.

J. H. Pedbury

Suggestion of a diminution of the Record, and motion for a certiorari

Filed Apl. 19. 1864.
L. Leland
Clk.

M. B. Keith
For Defendants

Supreme Court of Illinois
Third Grand Division
April Term A.D. 1864

The United States Express
Company, Garnishee of Henry
H. Knights

Plaintiff in Error

v

Joseph H. Bedbury

Defft in Error

And now
comes the said Joseph H. Bedbury, by
M. B. Rich his attorney & enters his ap-
pearance ~~specially~~ in the above entitled
cause which appearance the said Joseph H. Bedbury
as if the writ of Error had been duly served upon Defft in Error

M. B. Rich

Atty for Defft in Error

In Supreme Court Illinois

3. Grand Division

United States Express Co.
Defts in Error

vs.

Joseph H. Bradbury
Deft in Error

Appearance of
Deft in Error

Filed Apr 22 1864
S Leland Clk

STATE OF ILLINOIS, SS.
Supreme Court, Third Grand Division, at Ottawa:

The People of the State of Illinois,

To the Clerk of the Superior Court of Chicago Cook County, GREETING:

WHEREAS, in a certain plea between Joseph H. Bedbury

plaintiff and The United States Express Company
Garnishee of Henry H. Knights

defendant, lately depending in the Superior Court of Chicago ~~Court of~~ said County, wherein judgment was rendered for the said plaintiff

and against the said defendants

and the said defendants having sued out a writ of Error from said Supreme Court to reverse the judgment of said Court, rendered against said defendants as aforesaid which writ of Error is now pending in ~~as aforesaid, to~~ the Supreme Court, held at Ottawa, on the first Tuesday after the ~~first~~ Third Monday in April, A.D. 1864 and in pursuance of the said Writ of Error a transcript of the record and the proceedings in the plea aforesaid was transmitted. And, also, whereas it hath been suggested, on the part of said defendants in Error

that the said record has been diminished, inasmuch: 1st Item has been omitted from the same, the transcript of the judgment in the original suit Joseph H. Bedbury vs Henry H. Knights referred to in the departure of H. B. Reed of Jan. 2d. 1863. 2d part of the proceedings of the Court on the 9th day of December. 1863. 3d That said transcript does not contain a full and perfect copy of the return on the return on the Summons and on the declaration

hath not been sent up; and forasmuch as the said Supreme Court are not satisfied that there is a sufficien record sent in the plea aforesaid, but in the record there is a diminution: YOU ARE, THEREFORE, HEREBY COMMANDED, That, without delay, the said record so omitted or aforesaid now in Supreme Court therein you cause to be transmitted to the Supreme Court, ~~to be held~~ at Ottawa, ~~on the~~ forthwith next, without any diminution or addition whatsoever, to the end that speedy justice may be done in the premises, according to law; whereof you are in no wise to fail; and send yon then there this writ.

Witness The Hon. Pinkney H. Walker ~~John D. Caton~~, Chief Justice of said Court, and the seal thereof, at Ottawa, this 23d day of April in the year of our Lord one thousand eight hundred and ~~fifty~~ Sixty four

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

117

The United States Express Company Garnishee &c.

vs

Joseph H. Bedbury

~~Appeal~~

Certiorari

1. State of Illinois } ss.
Third Grand Division at Ottawa
September Term A.D. 1864

The United States Express Company
Garnishee of Henry St. Ringler
vs
Joseph H. Bedbury.

And now by way of return of said Writ of Certiorari to the Superior Court of Chicago the Clerk of the said Superior Court of Chicago hereby certifies that the papers certified to be a true transcript of the record and proceedings in said Superior Court of Chicago, in the suit of Joseph H. Bedbury vs The United States Express Company, Garnishee of Henry St. Ringler, contains a true transcript of said Record and proceedings except the following which now appear of record in said cause, to wit:

1- page

UNITED STATES OF AMERICA,

STATE OF ILLINOIS, COUNTY OF COOK, SS.

Pleas, before the Honorable, the Judges of the Superior Court of Chicago, within and for the County of Cook and State of Illinois, at a regular Term of said Superior Court of Chicago, begun and holden at the Court House in the City of Chicago, in said County and State, on the first Monday, being the Seventh day of December in the year of our Lord One Thousand Eight Hundred and Sixty-three and of the Independence of the United States of America the Eighty-Eighth

Present, The Honorable John M. Wilson Chief Justice of the Superior Court of Chicago.

Van H. Higgins } Judges.
Joseph E. Gary }

Joseph Knox Prosecuting Attorney

David S. Hammond Sheriff of Cook County.

Attest, Thomas B Carter Clerk.

Be it remembered that heretofore towit on the twenty fourth day of July in the Year of our Lord One thousand eight hundred and sixty three, there was filed in the office of the Clerk of said Superior Court the affidavit of M. Byron Rich, which affidavit is in the words and figures following towit:

State of Illinois }
Cook County ss. }

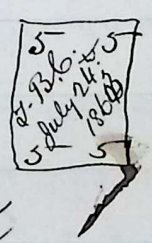
M. Byron Rich being duly sworn says that he is the Agent of Joseph H. Bedbury: that on the Tenth day of April in the year of our Lord Eighteen hundred and sixty two in Consideration of the Superior Court of Chicago, the said Joseph H. Bedbury in said Superior Court of Chicago on said day recovered a judgment against Henry H. Knights, in the Sum of One hundred and forty three dollars and Six Cents damages together with seven dollars and fifteen Cents his Costs ; that on the Seventeenth day of April 1862, an execution issued on said judgment directed to the Sheriff of Cook County Illinois for the collection of said damages and Costs, and which execution duly came into the Sheriffs hands on the Eighth day of July 1862, and which execution so issued on said judgment for said debt, damages and Costs, was returned on the fifteenth day of July A.D. 1862 by Anthony C. Hessing, Sheriff of said County of Cook by John A Nelson his deputy "No property found in my County, and I Return it no part Satisfied" and affiant says that said judgment is wholly due and unpaid and entirely unsatisfied. And that the said Henry H. Knights has no property within the knowledge of affiant in the possession of said Henry H. Knights liable to execution, and he further says that he is informed, and verily believes, that the said Henry H. Knights has no property subject to

execution; and he further says that the said Henry H. Knights resides in the said County of Cook, and affiant has just reason to believe and does believe that the "United States Express Company" so called, and the "American Express Company" so called, are both indebted to said Henry H. Knights or have effects or estate belonging to said Henry H. Knights and the affiant further says that there is danger that the benefit of said judgment will be lost unless the said "United States Express Company" and the said "American Express Company" be served as garnishee of the said Knights according to the Statute in such case made and provided.

M. Byron Rich

Subscribed and Sworn to before me this 24th day of July A.D. 1863.

Thomas B. Carter, Clerk



And afterward to wit on the day and year aforesaid there issued out of the Office of the Clerk of said Court the peoples writ of Summons, which with the return thereon is in the words and figures following, to wit.

4,

State of Illinois }
County of Cook } ss

The People of the State of Illinois to the Sheriff of said County: Greeting: ——

We Command you that You Summon the United States Express Company and the American Express Company if they shall be found in Your County, personally to be and appear before the Superior Court of Chicago, of said Cook County on the first day of the Term thereof to be holden at the Court house in Chicago in said Cook County, on the first Monday of August next to answer unto Joseph H. Bedbury as garnishee of Henry H. Knights, then and there to answer as to the rights, Credits, Effects, property Estate or Money in their, or either of their hands belonging to the said Henry H. Knights. And have you there, this writ with an endorsement thereon, in what manner you shall have executed the same. Witness Thomas B. Carter Clerk of our said Court and the Seal thereof at Chicago aforesaid this 24th day of July A.D. 1863

Thomas B. Carter Clerk



Seal

Served this Writ on the within named the United States Express Company, as Garnishee by reading and delivering a Copy thereof, to Harvey Colvin

5,

who is the agent, of the said United States Express Company: Also served the American Express Company as Garnishee by reading and delivering a copy to James C. Fargo, who is the agent of the said American Express Company, and by delivering a copy thereof to D. B. Cook who is a clerk the same Company, this 24th day of July 1863.

David S. Hammond, Sheriff
By John A. Nelson, Deputy

And afterward to wit on the First day of August in the year aforesaid, the plaintiff Joseph H. Bedbury by his Attorneys, Rich & Shepard, filed in the Office of the Clerk of said Court, certain Garnishee Interrogatories, which are in the words & figures as follows, to wit.

State of Illinois } ss. Superior Court of Chicago of
Cook County — } August Term 1863.

Joseph H. Bedbury —
vs.
The United States Express Company
Garnishee of Henry H. Knights } Interrogatories

administered by said Plaintiff to The United States Express Company, Summoned as the Garnishee of said defendant in the above entitled cause to wit:

Int. 1st Had you, at the time the writ herein was served upon you, or have you at any time since had, in your possession, custody, or charge, any lands, tenaments, goods, chattels, moneys, credits or effects of the said Defendant, or in which he had any interest? If yea, Specify the nature, amount, situation and value thereof, to whom the same belonged, the extent of his interest therein, under what conditions you held or now hold the same; whether the same is subject to any, and what incumbrance or lien; and if the same consists of money or credits, when the same became or will become due and payable?

Int. 2nd Do you know of any property or credits belonging, belonging to said Defendant in the possession, custody or charge of any other person or persons than yourself? If yea, name the person or persons, and specify what property or credits you refer to.

Int 3rd Were you, at the time you were served with process in this case, or have you at any time since been, indebted to said Defendant? If so, to whom, when, upon what, to what amount, is the same secured; if so, how and when was or will such indebtedness be due and payable?

2

7.

Int. 4th:- Do you know of any indebtedness to said Defendant from any other person or persons than yourself? If so, name the person or persons so indebted, and state the amount and nature of such indebtedness, as near as you can.

Rich & Shepard
Pltffs Attys

And afterwards, to wit, on the Seventh day of October in Year aforesaid, said day being one of the days of the October Term of said Court, the following, among other proceedings was had and entered of record in said Court to wit.

770
9032

Joseph H. Bedbury
vs
United States Express Company
Garnishee of Henry H. Knights
} Garnishment

Record 19 pages 472

This day again Comes said Plaintiff by Shepard & Rich his attorneys, and due personal service of the garnishee process, issued in said cause, having been had on the United States Express Company, as garnishee of said defendant Henry H Knights, by reading the same to Harvey D. Colvin the agent of said Company, and said Garnishee being three times solemnly called in open Court, Comes not, nor

does any person for said Company, but herein make default, which is on motion ordered to be taken, and is hereby entered of record: Wherefore on motion of said plaintiff it is therefore ordered that a Conditional judgment be entered against said Garnishee: Wherefore said Defendant ought to have and recover of said United States Express Company, Garnishee as aforesaid, for the use and benefit of said plaintiff a Conditional judgment for the sum of One hundred and fifty dollars and twenty one Cents, being the amount of judgment and Costs recovered against said Defendant by said Plaintiff

Therefore it is considered that said defendant do have and recover of said United States Express Company, Garnishee as aforesaid, for the use and benefit of said plaintiff, the sum of One hundred and fifty dollars, and twenty one Cents.

And it is further ordered that a Scire facias issue against said Garnishee, returnable to the next Term of this Court, requiring it then and there to appear, and show Cause why, if any it have, why this judgment should not be made final against it, and execution issue thereon

And afterwards to wit on the day and year aforesaid, there issued out of the Office of the

Clerk of said Court the Peoples writ of Scire Facias, with the Sheriffs Return thereon which is in the words and figures as follows, to wit:

9.

State of Illinois } ss
County of Cook }

The People of the State of Illinois, To the Sheriff of said County Greeting:

Whereas at the April Term of the Superior Court of Chicago held in and for the ~~said~~ County of Cook and State of Illinois, to wit: on the tenth day of April A.D. 1863, before the said Court then judicially sitting at the Courthouse in the City of Chicago in said County Joseph H. Bedbury plaintiff by the judgment and Consideration of our said Court recovered a judgment in a certain plea of Assumpsit then pending in our said Court against Henry H. Knights for the Sum of One hundred and forty three dollars, and Six Cents damages and the Costs of Suit, which said judgment still remains in full force, and unsatisfied as to the said Henry H. Knights: And whereas afterwards to wit, on the 24th day of July A.D. 1863. The United States Express Company, was Summoned as garnishee of said Henry H. Knights to appear before said Court on the first day of the August Term of said Court, to be holden at the Courthouse in the City of Chicago, in said County, on the first Monday

of August A.D. 1863, to answer whatever should then and there be objected against it as such garnishee.

10, And the said United States Express Company, garnishee of said defendant having failed to appear at said Court on the day to which it was summoned as aforesaid, to answer according to the Statute in such case made and provided, whereby a Conditional judgment was entered against the said United States Express Company by said Court on the 7th day of October instant at the October Term A.D. 1863 of said Court, for the sum of One hundred & forty three dollars and six Cents Damages, besides Cost of Suit.

We do therefore hereby command you, That you summon the said United States Express Company, if it shall be found in your County, personally to be and appear before the said Superior Court of Chicago, on the first day of the next term thereof, to be holden at the Court house in the City of Chicago, in said Cook County, on the first Monday of November next, then and there to show cause, if any it has or can show why the Conditional judgment entered against it in said cause should not be made final and execution issue against it to make the amount of said judgment with costs of suit.

And have you then and there this writ,

with your return hereon, in what manner you have executed the same. Witness Thomas B Carter Clerk of our said Court and the Seal, thereof at the City of Chicago in said County this 7th day of October A.D. 1863.

11

(Seal)

Thomas B. Carter

Served this writ on the within named United States Express Company by reading and delivering a copy thereof to Harvey D. Colvin, Superintendant of the said Company this 15th day of October 1863

David S. Hammond, Sheriff
By John A. Nelson Deputy

And afterwards to wit on the Fourteenth day of November in the year aforesaid, said day being one of the days of the November Term of said Court, the following among other proceedings was had and entered of record in said Court to wit:

Joseph H. Bedbury ——— }
v } Garnishment
United States Express Company }
Garnishee of Henry H. Knights }

And now again comes said plaintiff by Shepard & Rich his attorneys

Record 12 Page 595

and due personal service of the Garnishee Writ of Scire facias issued on the Conditional judgment in said cause having been had on the said United
12, States Express Company as Garnishee of the said defendant Henry A. Knights by delivery of a copy of said writ to Harvey D. Colvin, Superintendent of said Company, and the said Garnishee, and the said Harvey D. Colvin, Superintendent being three times solemnly called in open Court come not, nor does any person for them or the said Garnishee, but herein make default, and it is ordered that the default of the said Garnishee, be and the same is hereby taken and entered herein of record: Whereupon on motion of said plaintiff it is ordered that the Conditional judgment entered in this cause against the said United States Express Company as Garnishee of said defendant on the Seventh day of October last past of the October Term 1865 of this Court for the sum of One hundred & fifty dollars and twenty one cents, damages and
$150.21 Costs of suit taxed at be and the same is hereby made final against the said United States Express Company, Garnishee as aforesaid of Henry A. Knights, and that said plaintiff have execution against said Garnishee on said judgment and for costs of garnishee process.

And afterwards to wit on the Twenty eighth day of November in the year aforesaid there was filed in the office of the Clerk of said Court a certain Notice of Bates & Fowslee, Affidavits of H. D. Colvin and C. Beckwith and Endorsement of Service; which Notice Affidavits and Endorsement are in the words & figures following to wit:

13.

Joseph H. Bedbury
vs
Henry H Knights } In Superior Court of Chicago
November Term 1863.
The United States Express Company Garnishee

To M. B. Rich Esq.
Atty for Bedbury

Sir

You will please take notice that we shall on Saturday the 28th. November 1863 at 2 o'clock afternoon, move the Court to vacate the judgment entered against the United States Express Company on the 14th. Inst. in said Superior Court, in favor of said Joseph H Bedbury for the reasons set forth, in the affidavits Copies of which are hereto annexed and the affidavit of C. Beckwith, on file in said cause; and that said United States Express Company may appear, answer and defend said suit against them as Garnishee

of said Henry H. Knights, defendant in above entitled cause.

14, 28th Nov 1863

Bates & Towslee
Attys for United States Express Company

Joseph H. Bedbury
vs.
Henry H. Knights
Same
vs.
The United States Express Company
Summond as Garnishee.

} In Superior Court of Chicago Nov Term 1863

State of Illinois } ss
Cook County }

H. D. Colvin, of Cook County Illinois, being duly sworn says, that he is the Agent of The United States Express Company, that on the 24th July 1863 the said Express Company was Summoned as Garnishee in a suit then pending in the Superior Court of Chicago wherein Joseph H. Bedbury was plaintiff, and Henry H. Knights was defendant to appear in said Court on the first Monday of August 1863: that afterwards, and some time in the month of August as this affiant is informed a conditional judgment was entered in said Court against said United States Express Company. That afterwards to wit on the 7th day of October 1863

4

a Scire facias was issued in said suit returnable on the first Monday of November 1863, a copy of which Scire facias is hereto annexed, Marked "A", and
15. this affiant further says, that immediately upon said writ of Scire facias being served upon said United States Express Company, this affiant retained, and employed C. Beckwith Esq, an Attorney of this Court to appear for the said United States Express Company in this Court, and take all necessary and proper steps to defend the said suit against said Company as Garnishee in said suit, that this affiant relying upon Mr Beckwith, to appear and attend to said suit gave no further attention to the same, not supposing it was necessary for him so to do, that this affiant never learned until this morning the 28th Nov. 1863 that Mr. Beckwith had not appeared for said Company, and defended the same: and this affiant further says, that the said United States Express Company was not, at the time they were served with the Summons in the above mentioned suit as Garnishee of said Henry H. Knights indebted to the said Henry H. Knights in any sum whatever, nor have said Company at any time since that time, or are they now indebted to the said Knights in any sum or in any way Manner whatever, and on the Contrary said Knights was on said 24th July 1863, and is now indebted to the said Company in a Large sum of Money. That this affiant further says that

16.

said Express Company have not been in any fault in not having appeared and attended to said suit and prevented a judgment being rendered against ~~them~~ said Company on the 14th instant, that said United States Express Company have a good defense to said suit against them as Garnishee of said Knights to the whole amount for which said judgment has been entered against said Company and this affiant would therefore ask this Court to vacate said judgment, and allow said Company to answer to said suit, and defend the same; and this affiant further says that at the time he retained Mr Beckwith in said suit, he this affiant informed Mr. Beckwith he was about leaving for New York and should be absent some weeks, and this affiant did leave for New York, and was absent some four weeks.

H. P. Colvin

Subscribed and Sworn to before me
this 28th November 1863.

C. M. Hawley
Notary Public

State of Illinois,
Cook County } ss

Served Copies of motion and affidavit of H. P. Colvin, on M. B. Rich Esq by leaving the same at the Office of said Rich in Chicago this 28th Nov. 1863, and there was no person in the said Office at the time, and I pushed the Copies under the door

of said Office.

Ed. C. Towslee

Subscribed & Sworn before me
this 28th Nov. 1863 ——
Thomas B Carter, Clerk

Enter Ret Certificate 5 Ct. Stamp Cancelled

17.

Joseph H. Bedbury
vs
Henry H Knights
Same
vs
United States Express Company
Garnishee ——

In Superior Court of Chicago
Nov. Term 1863

State of Illinois
Cook County — } ss

C. Beckwith of Cook County being duly Sworn, says that he was retained by the United States Express Company to appear and answer to the suit against said Express Company, Summoned as Garnishee of in the suit of Joseph H. Bedbury vs. Henry H. Knights, that this affiant understood the suit was pending in the Circuit Court of Cook County Illinois, and that the Scire facias was made returnable at the November Term 1863 of the Circuit Court of Chicago on the 3rd Monday of November, that on the 8th day of November 1863, this affiant went to Mt. Vernon in this State actually engaged in

18. the argument of Cases then pending in the Supreme Court of this State, that this affiant did not return to the City of Chicago until the 18th Nov. 1863, that immediately upon his return he went to the Clerks office of the Circuit Court, and endeavored to find the papers in the Case, but was unable to do so, that on the morning of the 18th Nov. 1863, this affiant was informed for the first time, that said suit was pending in the Superior Court of Chicago and that a final judgment had been entered against the United States Express Company as the Garnishee of the said Henry St. Knights, that obtaining said judgment has been the result of the engagements of this affiant in the Supreme Court at the time of the rendering said judgment in Superior Court in this County and the misunderstanding aforesaid that this affiant expected to have been able to have returned to Chicago from his attendance in the Supreme Court in time to have prepared the answer of said United States Express Company to the Interrogatories filed in said suit for this Garnishee to answer, before a final judgment would have been rendered in said suit against said Garnishee, but his duties in the said Supreme Court was such that he was unable to return before the 18th Nov 1863; that since his return and finding that a judgment had been rendered the 14th inst. he has been unable until this moment to move

5

that said judgment against said Garnishee may be vacated, and said Garnishee be allowed to answer and defend the same.

C. Beckwith

19.

Subscribed & Sworn to before me, this 28th Nov 1865.

C. M. Hawley
Notary Public

5 Certificate Stamps Canceled 5

And afterward, to wit, on the Twenty eighth day of November in the year aforesaid, said day being one of the days of the November Term of said Court, the following ~~among~~, among other proceeding, was had and entered of record in said Court to wit:

770
9032

Joseph H. Bedbury
vs.
United States Express Company
Garnishee of Henry H. Knight

Garnishment

And now upon this day comes the said United States Express Company by Bates & Towslee, its attorneys, and upon reading the affidavits filed herein, and upon motion of the said attorneys for said Garnishee, it is ordered that the judgment heretofore entered

Record 12 Page 637

against the said United States Express Company as Garnishee of Henry H. Knights upon the 14th
20. day of November A.D. 1863, being at the present term of this Court, be set aside and vacated upon payment by said Garnishee of all the Costs of this Garnishee proceeding, unless the said plaintiff Joseph H. Bedbury show cause to the contrary by the first Wednesday of the next December Term of this Court, the same being the ninth day of December next, provided that a copy of this order be served upon the said plaintiff or his attorney at least five days before that day, and it is further ordered that execution herein be meantime stayed or until the further order of this Court.

And afterwards, towit, on the ninth day of December in the year aforesaid, said plaintiff by his attorney N. B. Rich filed in the Office of the Clerk of said Court a certain affidavit and causes, which affidavit and causes are in the words and figures following, towit:

State of Illinois
County of Cook } ss

Superior Court of Chicago
December Term A.D. 1863

Joseph H. Bedbury
vs
United States Express Company
21. Garnishee of Henry H. Knights

State of Illinois
County of Cook } ss M. B. Rich being first, duly sworn, upon oath says that he is the Attorney for the plaintiff, Joseph H Bedbury in said Cause — that at the time of his taking final judgment against the said United States Express Company, as Garnishee as aforesaid, he was informed of a debt then due and owing from another party to the said Henry H. Knights and was told by a person in the interest of such party so owing said Knights, that if this affiant would cause to be issued a writ against such party as Garnishee of said Henry H. Knights, the said debt so due and owing could be held for the benefit of said plaintiff Joseph H. Bedbury. But this affiant says that relying upon making the said plaintiffs debt against said Henry H. Knights from the said United States Express Company, by reason of its failure to answer when garnished, and Summoned by Scire facias writ, and supposing from that fact (of failure to answer) that said United States Express Company did then owe the said Henry H. Knights the amount of said plaintiff's debt against said Knights, as set forth in the writs

of Summons and Scire facias, Served upon said
22, Express Company as Garnishee as aforesaid
this affiant declined to cause the issuing of a
writ to garnishee such other party - That
this affiant upon learning of the Motion of said
United States Express Company, to set aside & Vacate
said final judgment against said Express Company
immediately made inquiries about said debt so
due and owing to said Knights from such other
party at the time aforesaid, that is to say at
the time of taking said final judgment, - and was
given to understand, and he Verily believes it to be
the fact - that subsequent to the time last afore
-said, the money due and owing to said Knights
from such other party had been by that party paid
to said Knights. And this affiant further says
that had the said United States Express Com-
-pany answered in said cause as required
by law, and stated that it owed nothing to said
Knights, this affiant would have caused
the issuing of a writ against said other party
as garnishee of said Knights, and this affiant
Verily believes he should so have made the whole
or a large part of the said plaintiffs said debt
against said Knights, out of the moneys so due
from such other party to said Knights. And
this, Affiant believes, if the said motion to
set aside said judgment be granted, the neglect

of said Express Company, in not answering
in proper time as required by law, will result
23. in the loss to the plaintiff of his debt against said
Henry H. Knights, as this affiant is informed and
believes that said Knights keeps no property
subject to the processes of the law, and is insolvent

And this affiant further states upon
information and belief that said Henry H. Knights
has for some years last past been in the
employ of said United States Express Company
upon a large salary and that he still remains
in such employ, with a large salary payable
monthly or at such times often as the said
Knights may require payment.

And this affiant upon oath further
says that neither the plaintiff Joseph H. Bedbury
nor this affiant had actual or constructive notice
of the making said motion to set aside & vacate
said judgment by said Express Company, and
that neither the said Bedbury nor this affiant
knew that said motion had been or was to be
made until after the same had been granted.
That such motion was granted and the
Term of Court at which it was made had
expired, and the Court adjourned, before this
affiant or the said Bedbury was advised of the
Order of the Court upon such motion. That said
plaintiff Bedbury has not, nor has this affiant

24,

been at any time served with the affidavits or copies thereof, used or to be used in support of said motion to set aside and vacate said judgment.

M. Byron Rich

Subscribed and Sworn to this 9th day of December A.D. 1863 before me —

Thomas B. Carter Clerk



State of Illinois } ss.
County of Cook } Superior Court of Chicago
of the December Term 1863

Joseph H. Bedbury —
vs
United States Express Company
Garnishee of Henry H. Knights

And now comes the said plaintiff Joseph H. Bedbury by M. B. Rich his Attorney, to show Cause why the motion to set aside and vacate the judgment in said Cause obtained against said United States Express Company, should not be granted, and assigns the following reasons:

1st No Notice of such Motion was given to the plaintiff or his attorney, prior to its being

made or to its being called up and argued by said Express Company, and the plaintiff and his attorney were
25. in fact entirely uninformed of said Motion until after the same had been granted by said Court.

2nd The affidavits used by said Express Company in support of said Motion have never been served by Copy or otherwise upon said Bedbury or his attorney, as required by Rule No. 21 & others established by said Court.

3rd The said Motion and affidavits in suppost thereof were not placed upon the files of said Court one day prior to the calling up of said Motion for a hearing: as required by Rule No. 21 & others of the Rules established by said Court.

4th The Court should not have granted Motion nisi etc. The Motion should have been granted or denied absolutely.

5th The Court can not set aside & Vacate a final judgment after the term of the Court at which such judgment was obtained has expired.

6th The Court could not by granting the Motion nisi etc Convey over to the succeeding term of

26, the Court the power to set aside and vacate a final judgment made and entered at the prior term.

7th Both by the rules of this Court, and by the Common law, the plaintiff was entitled to notice, either to himself or his attorney, of at least one day, prior to the calling up and hearing of a motion to set aside and vacate a final judgment.

8th The affidavits on file in support of said motion show great neglect on the part of both the said Express Company and its attorney in making its defence in said cause and the plaintiff Bedbury would suffer loss by such neglect, if the said final judgment should be set aside and vacated.

9th The granting of the said motion to set aside and vacate said judgment was contrary to law and the rules of said Court

M. B. Rich
Atty. for Bedbury

27. And on the Third day of December in the year aforesaid, the defendant, the United States Express Company, garnishee of Henry H Knights by its Attorneys Bates & Towslee filed in the Office of the Clerk of said Court a certain answer and affidavit which are in the words and figures following, to-wit

Joseph H Bedbury —
vs.
The United States Express Company
Garnishee of Henry H Knights
} Cook County, Illinois
In Superior Court
Chicago A.D. 1863

The United States Express Company summoned as Garnishee of Henry H Knights, at the suit of Joseph H. Bedbury in the Superior Court of Chicago in aforesaid County comes & answers as such Garnishee, and the interrogatories filed by the said plaintiff for this defendant to answered, answering says to the first interrogatory:

That at the time the said writ of Garnishee was served upon this defendant nor at any time since, this defendant had not in its possession, custody or charge, any lands, tenaments, goods chattels, credits or effects of the said Henry H. Knights defendant, or in which the said Henry H. Knights had any interest.

28

To the second Interrogatory above, this defendant answering says, that it this defendant at the time of the service of said writ upon this de-fendant, or at any time since had no knowledge whatever of any property or Credits belonging to the said Henry H. Knights, said above named de-fendant in the possession, Custody, or Charge of any other person or persons whatever, besides this garnishee.

To the Third Interrogatory - This Defend-ant answering says that at the time of the service of said writs of Garnishee upon this defendant or at any time since that time, this defendant was not indebted to the said Henry H. Knights, nor at any time since, nor at this time is not indebt-ed to the said Henry H. Knights Defendant.

To the Fourth Interrogatory. This defendant answering says that it does not know of any indebtedness to said Henry H. Knights from any person or persons whatever.

And this defendant further says, that at the time of the service of said writ upon this defendant, the said Henry H. Knights was indebted to this defendant in the sum of about Sixty Dollars, and ever since that time and now is indebted to this defendant in that sum

Harry D. Colvin
for United States Ex. Co.

State of Illinois, }
Cook County } ss.

Harvey D. Colvin of Cook County

29. Illinois, being duly sworn, on oath says, that the United States Express Company is an association having an office and place of business in the City of Chicago Illinois, that this affiant is the Chief and principal agent and officer of said Defendant in the City of Chicago and that he knows the state and condition of the business affairs of said Company with the said Henry H Knights, that he has read the foregoing answer of the United States Express Company as Garnishee, and knows that the said answer is true in substance and fact.

H. D. Colvin

Subscribed and sworn to before me this 3rd day of December 1863 —

C. M. Hawley

5 Cents Revenue Stamp Cancelled 5 5

And afterwards, towit, on the Eleventh day of December in the year aforesaid, said day being one of the days of the December Term of said Court, the following among other

proceedings was had and entered of
30. record in said Court, to wit,

Joseph H. Bedbury —
Vs
United States Express Company
Garnishee of Henry H. Knights
} Garnishment

770
9032

Record 14, Page 32

And now comes said plaintiff by Rich and Shepard his Attorneys having filed affidavits in support of his motion to set aside the order heretofore entered herein of the twenty eighth day of November last past requiring him to show cause why the judgment against said Garnishee should not be set aside on payment of costs, and it appearing to the Court that said plaintiff has shown sufficient cause to the contrary why said Garnishee judgment should not be set aside, on payment of costs and execution stayed thereon, it is ordered by the Court that the order of the twenty eighth day of November last past setting aside said Garnishee judgment on payment of costs be and the same is hereby set aside, and discharged of record on cause shown by plaintiffs attorneys.

And afterwards to wit on the Twenty sixth day of December in the year aforesaid, said
31. day being one of the days of the December Term of said Court the following among other proceedings was had and entered of record in said Court, to wit:

Joseph H. Bedbury
V
United States Express Company } Garnishment
Garnishee of Henry H. Knights

770
9032

Record 14. page 78

And now comes said United States Express Company Garnishee herein, and prays an appeal, which is allowed on filing Bond in the penalty of three hundred and five dollars, which bond is thereupon filed and approved.

And afterwards, to wit on the day and year aforesaid, said United States Express Company filed in the office of the Clerk of said Court its appeal Bond, which is in the words and figures following to wit

32,

Know all Men by these presents that we the United States Express Company Harvey D. Colvin and James C. Fargo of the County of Cook and State of Illinois are held and firmly bound unto Joseph H. Bedbury in the penal sum of Three hundred and five dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly, severally and firmly, by these presents

Witness our hands & Seals this 21st day of December A. D. 1863.

The Condition of the above obligation is such, that whereas Henry H. Knights for the use of said Joseph Bedbury did lately in the Superior Court of Chicago, in and for the County of Cook, and State aforesaid recover a judgment against the United States Express Company for the sum of One hundred and fifty dollars and twenty one cents, besides costs of suit. from which said judgment of the said Superior Court of Chicago, the said United States Express Company has prayed for, and obtained an appeal to the Supreme Court of said State.

Now therefore, if the said United States Express Company shall duly prosecute its said appeal with effect, and moreover

pay the amount of the judgment, costs, interest and damages rendered, and to be rendered against it in case the said judgment shall be affirmed in said Supreme Court, then the above obligations to be void otherwise to remain in full force and virtue

33

United States Express Company (Seal)
By H. D. Colvin agent (Seal)
H. D. Colvin (Seal)
Jas. C. Fargo (Seal)

Taken and entered into
before me at my office
in Chicago this ——
day of ——————
A.D. 186—

——————— Clerk

And on the Twenty first day of December in the Year aforesaid, said United States Express Company filed in the Office of the Clerk of said Court its Bill of Exceptions which is in the words and figures following, to wit:

35.

The United States Express Company
Garnishee of
Henry H. Knights
adms
Joseph H. Bedbury

Afterwards, to wit. at a Superior Court of Chicago held at the Court-house in the City of Chicago in the County of Cook, on the 28th day of November A.D. 1863, of the same November Term of the said Superior Court of Chicago before the Judge of the said Superior Court, the said The United States Express Company, Garnishee of Henry H. Knights at the suit of Joseph H. Bedbury, moved the said Superior Court to vacate the judgment rendered by said Court on the 14 day of November 1863 of the said November Term 1863 of said Court in favor of Joseph H. Bedbury against The United States Express Company, by default, and want of appearance of the said United States Express Company. For that the said Judgment was rendered by the said Court by mistake of the said United States Express Company, and the Mistake of Counsel employed by said United States Express Company, to appear and answer in said suit, and for reasons set forth in the affidavits of H. D. Colvin, Agent

of the United States Express Company, and
36. C. Beckwith on file in said Court, which affi-
-davits are as follows Viz: —

Joseph H. Bedbury
vs
Henry H. Knights
} In Superior Court of Chicago in Nov. Term 1863

Same
vs
The United States Express Company
}

State of Illinois
Cook County —
} ss

C. Beckwith of Cook County, being duly sworn says that he was retained by the United States Express Company to appear and answer to the suit against said Express Company summoned as Garnishee in the suit of Joseph H. Bedbury against Henry H. Knights, that this affiant understood the suit was pending in the Circuit Court of Cook County Illinois, and that the Scire facias was made returnable at the November Term 1863 of the Circuit Court of Chicago on the 3rd Monday of November, that on the 8th day of November 1863, this affiant went to Mt Vernon in this State, actually engaged in the argument of cases then pending in the Supreme Court of this State, that this affiant did not return to the

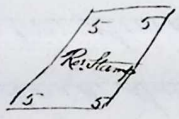
City of Chicago until the 18th November 1863, that immediately upon his return he went to the Clerks Office of the Circuit Court and endeavored to find the
37. papers in the case but was unable to do so, that on the morning of the 18th November 1863, this affiant was informed for the first time that said suit was pending in the Superior Court of Chicago, and that a final Judgment had been entered against the United States Express Company as the Garnishee of said Henry H. Knight, that obtaining said Judgment has been the result of the engagements of this affiant in the Supreme Court at the time of rendering said Judgment in Superior Court in this County, and the misunderstanding aforesaid. That this affiant expected to have been able to have returned to Chicago from his attendance in the Supreme Court in time to have prepared the answer of said United States Express Company to the Interrogatories filed in said suit for this Garnishee to answer, before a final Judgment would have been rendered in said suit against said Garnishee; but his duties in said Supreme Court were such, that he was unable to return before the 18th November 1863. That since his return and finding that a Judgment had been rendered the 14th inst. he has been unable until this moment to move that said Judgment against said Garnishee may be vacated and said

Garnishee be allowed to answer and defend the same.

C. Beckwith

38 Sworn and Subscribed
before me this 28th Nov: 1863

C. M. Hawley
Notary Public



Joseph H. Bedbury
vs
Henry H. Knights } In Superior Court of Chicago, Nov Term 1863

Same
vs
The United States Express Company
Summoned as Garnishee

State of Illinois
Cook County } ss

H. D. Colvin of Cook County Illinois, being, duly Sworn, Says that he is the Agent of the United States Express Company, that on the 24th July 1863 the said Express Company was Summoned as Garnishee in a suit then pending in the Superior Court of Chicago, wherein Joseph H. Bedbury was Plaintiff and Henry H. Knights was defendant, to appear in said Court on the first Monday of August 1863, that afterwards, that

and

and some time in the month of August as this
affiant is informed, a conditional judgment
39. was entered in said Court against said United
States Express Company, that afterwards, to wit,
on the 7th day of October 1863, a Scire facias was
issued in said suit, returnable on the first Mon-
-day of November 1863, a copy of which Scire
facias is hereto annexed, marked "A", and this
affiant further says that immediately upon said
writ of Scire facias being served upon said United
States Express Company, this affiant retained
and employed C. Beekwith Esqr an Attorney
of this Court to appear for the said United States
Express Company in this Court, and take all
necessary and proper steps to defend the said
suit against said Company as Garnishee in
said suit, that this affiant relying upon Mr.
Beekwith to appear and attend to said suit, gave
no further attention to the same, - not supposing
it was necessary for him so to do, that this affiant
never learned until this morning the 28th November
1863, that Mr. Beekwith had not appeared for
said Company and defended the same, and this
affiant further says that the said United States
Express Company was not at the time they were
served with the Summons in the above mentioned
suit as Garnishee of said Henry St. Knights, in-
-debted to the said Henry St. Knights in any sum

whatever, nor has said Company at any time since
40. that time, nor are they now indebted to the said
Knights in any sum or in any manner whatever;
and on the contrary said Knights was on the 24th
July 1863 and is now indebted to the said Company
in a large sum of money, that this affiant further
says that said Express Company have not been in
any fault in not having appeared and attended to
said suit and prevented a judgment being ren-
dered against said Company on the 14th Inst. that
said United States Express Company have a good
defence to said suit against them as Garnishee of
said Knights & the whole amount for which said judg-
ment has been rendered against said Company. and
this affiant would therefore ask this Court to vacate
said judgment and allow said Company to answer
to said suit and defend the same, and this affiant
further says that at the time he retained Mr.
Beckwith in said suit he this affiant informed
Mr. Beckwith he was about leaving for New York and
should be absent some weeks, and this affiant did
leave for New York, and was absent some four weeks

H. D. Colvin

Subscribed and Sworn
before me this 28th Nov. 1863

C. M. Hawley.
Notary Public

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41

Joseph H. Bedbury
vs
Henry H. Knights
The United States Express Company
Garnishee

In Superior Court, Chicago
November Term
1863.

To M. B. Rich Esq.
Atty for Bedbury

Sir,

You will please to take Notice that we shall on Saturday the 28th November 1863 at 2 o'clock afternoon, move the Court to vacate the judgment entered against the United States Express Company on the 14th Inst. in said Superior Court in favor of said Joseph H. Bedbury for the reasons set forth in the affidavits, copies of which are hereto annexed and the affidavit of C. Beckwith, on file in said cause, and that said United States Express Company may appear, answer and defend said suit against them as Garnishee of said Henry H. Knights.

28th Nov. 1863. Bates & Fowslee, Attys
for United States Express Company

Afterwards, to wit, on the 28th day of November 1863 of the same November Term 1863 of said Superior Court of Chicago held at the Court house in said City of Chicago, before the Judges thereof

the said Superior Court made the following Order in said cause Viz:-

42

Joseph H. Bedbury
vs
United States Express Company Company
Garnishee of Henry H Knights

} Garn.

And now upon this day comes the United States Express Company by Bates & Towslee its Attorneys, and upon reading the affidavits filed herein and upon Motion of the said Attorneys for said Garnishee. It is ordered that the Judgment heretofore entered against the said United States Express Company as Garnishee of Henry H. Knights upon the 14th day of Novembes A.D. 1863 being at the present term of this Court, be set aside and vacated, upon payment by said Garnishee of all costs of this Garnishee proceeding unless the said Plaintiff Joseph H. Bedbury shew cause to the contrary by the 1st Wednesday of the next December Term of this Court. the same being the Ninth day of December next, provided that a copy of this order be served upon the Plaintiff or his Attorneys at five days before that day, and it is further ordered that Execution herein be meantime Stayed, or until the further order of this Court.

Afterwards, to wit:

on the Eleventh, day of December 1863, at a Term of said Superior Court of Chicago held at the Courthouse in the City of Chicago on said day before the Judges
43. of said Superior Court of Chicago, Came the said Joseph H. Bedbury, by his Attorney, and the said United States Express Company by its Attorneys, and being then and there before the said Court proven and Shewn that the said United States Express Company had paid all the costs of the said Garnishee proceedings Mentioned in the order of said Court setting aside and Vacating the Judgment in favor of Joseph H. Bedbury, against the United States Express Company, and have also made due Service of a Copy of said order upon the Attorneys of said Joseph H. Bedbury, five days previous to the Ninth day of December 1863, as required in said Order.

On Motion of the Attorney of said Joseph H. Bedbury the said Court ordered, and decided that the said Order setting aside and Vacating the said Judgment in favor of the said Joseph H. Bedbury against the said United States Express Company the 28th day of November 1863 of the November Term 1863, of said Superior Court of Chicago be set aside and Vacated and that the said Judgment against said United States Express Company the
44. 14th day of November 1863, do Stand and Continue the Judgment of said Court for the reason that the Court had not the power to Vacate and Set

aside the said Judgment on the 28th day of November 1863 of the said November Term 1863 of said Court, in Consequence of a rule of the said Superior Court requiring Notices of all Motions and, copies ~~and Copies~~ of the Affidavits on which founded to be served upon the opposite party or his Attorney at least one day previous to the time set for the hearing of such Motion, which rule is of record in said Court and published in pamphlet for distribution.

The Affidavit of M. B. Rich filed to Shew Cause against the order to set aside and vacate said Judgment is as follows

State of Illinois } ss
Cook County } ss

Superior Court of Chicago
December Term A.D. 1863

Joseph H. Bedbury
vs
United States Express Company
Garnishee of Henry H. Knights

State of Illinois }
County of Cook } ss

M. B. Rich being first duly sworn upon oath says, that he is the Attorney for the plaintiff Joseph H. Bedbury in said cause, that at the time of his taking final judg

-ment against the said United States Express Com-
-pany as Garnishee as aforesaid, he was informed of
45. a debt then due and owing from another party to
the said Henry H. Knights, and was told by a person
in the interest of such party so owing said Knights,
that if this affiant would cause to be issued a Writ
against such party as Garnishee of said Henry H
Knights, the said debt so due and owing could
be held for the benefit of said Plaintiff Joseph H.
Bedbury, but this affiant says that relying
upon making the said Plaintiffs debt against
said Henry H. Knights from the said United
States Express Company, by reason of its failure
to answer when Garnishee and Summoned by
Scire facias Writ, and supposing from that
fact (of failure to answer) that said United
States Express Company, did then owe the
said Henry H. Knights the amount of said Plain-
-tiffs debt against said Knights as set forth in the
Writs of Summons and Scire Facias, Served upon
said Express Company as Garnishee as aforesaid
this affiant declined to cause the issuing of a Writ to Garnishee
such other party, that this affiant upon learning
of the Motion of said United States Company, to
Set aside and Vacate said final Judgment
against said Express Company immediately made
enquiries about said debt, so due and owing to
said Knights from such other party at the time

aforesaid, that is to say at the time of taking said
46. final judgment, and was given to understand, and
he verily believes it to be the fact, that subsequent to the
time last aforesaid, the Money due and owing to
said Knights from such other party, had been by that
party paid to said Knights, and this affiant further
says that had the said United States Express
Company answered in said cause as required by
law, and stated that it owed nothing to said
Knights - this affiant would have caused
the issuing of a writ against said other party
as Garnishee of said Knights, and this affiant
verily believes he should so have made the whole
or a large part of the said Plaintiffs said debt
against said Knights, out of the Moneys so due
from such other party to said Knights, and this
affiant believes if the said Motion to set aside said
judgment be granted the neglect of said Express
Company in not answering in proper time as
required by law, will result in the loss to the
Plaintiff of his debt against said Henry H. Knights
as this affiant is informed and he believes that
said Knights keeps no property subject to the pro-
-cesses of the law and is insolvent, and this affiant
further states upon information and belief that said
Henry H. Knights has for some years last past been
in the employ of said United States Express Company
upon a large salary, and that he still remains in such

employ with a large Salary payable monthly or
at such times oftener as the said Knights may
47. require payment. And this affiant upon oath
further says that neither the plaintiff Joseph H.
Bedbury nor this affiant had actual or constructive
notice of the making said motion to set aside and
vacate said judgment by said Express Company
and that neither the said Bedbury nor this affiant
knew that said motion had been or was to be made
until after the same had been granted, that such
motion was granted and the Term of Court at
which it was made had expired and the Court
adjourned before this affiant or the said Bedbury
was advised of the order of the Court upon such
motion - That said plaintiff Bedbury has not
nor has this affiant been at any time served
with the Affidavits or Copies thereof used or
to be used in support of said motion to set aside
and vacate said judgment.

M. Byron Rich

Subscribed and Sworn to -
this 9th Day of December
A.D. 1863 before Thos. B. Carter, Clerk

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× To which order and decision of said Court the United States Express Company excepted and did insist that the said Court had power to make the said Order

vacating and setting aside said judgment.

And because none of the said Exceptions so
48. offered and made to the opinion and decision of the said Superior Court & do appear upon the record of the said Court, therefore on the prayer of the said United States Express Company the said Judges of the said Superior Court hath put to this bill of Exception their Seals, according to the Statute in such case made and provided, this 11th day of December 1863.

Joseph E. Gary (Seal)
Judge of Superior Court of Chicago

(a)

State of Illinois
County of Cook } ss

The People of the State of Illinois, to the Sheriff of said County, Greeting:

Whereas, at the April Term of the Superior Court of Chicago, held in and for the County of Cook and State of Illinois towit, on the Tenth day of April A.D. 1863, before the said Court then judicially sitting at the Court-house in the City of Chicago, in said County Joseph H. Bedbury plaintiff by the judgment and consideration of our said Court, recovered a judgment in a certain plea of Assumpsit

then pending in our said Court against Henry H. Knights for the Sum of One hundred & forty three
49. Dollars and Six Cents, damages, and the Costs of Suit, which said judgment still remains in full force, and unsatisfied as to the said Henry H. Knights, and whereas afterwards, to wit, on the 24th, day of July A.D. 1863, The United States Express Company was Summoned as garnishee of said Henry. H. Knights to appear before said Court on the first day of the August Term of said Court, to be holden at the Courthouse in the City of Chicago, in said County, on the first Monday of ~~the~~ August A.D. 1863, to answer whatever should then and there be objected against it as such Garnishee.

And the said United ~~States~~ Express Company Garnishee of said defendant having failed to appear at said Court on the day to which it was Summoned as aforesaid, to answer according to the Statute in such case made and provided, whereby a conditional judgment was entered against the said United States Express Company by said Court on the Seventh day of October Instant at the October Term A.D. 1863 of said Court, for the
53. Sum of One hundred and forty three Dollars and Six Cents damages, besides cost of suit.

We do therefore hereby Command You

that You Summon the said United States Express Company, if it shall be found in your County, personally to be and appear before the said Superior Court of Chicago, on the first day of the next term thereof, to be holden at the Courthouse in the City of Chicago, in said Cook County, on the first Monday of November next, then and there to shew cause if any it has or can show, why the conditional judgment entered against it in said cause should not be made final, and execution issue against it to make the amount of said judgment with costs of suit.

And have You then and there this writ with your Return thereon, in what manner You have executed the same.

Witness Thomas B. Carter, Clerk of our said Court and the Seal thereof at the City of Chicago, in said County this Seventh day of October A.D. 1863

L.S.

Thomas B. Carter, Clerk

51.

State of Illinois }
County of Cook } ss.

I, Thomas B. Carter, Clerk of the Superior Court of Chicago within and for the County and State aforesaid, do hereby Certify, the above and foregoing to be a full, true and complete transcript of the Garnishee proceedings in a certain cause lately pending therein, on the Law side thereof wherein Joseph H. Bedbury was plaintiff, and the United States Express Company as Garnishee of Henry H. Knights was defendant.





In Witness Whereof I have hereunto set my hand and affixed the Seal of said Court, this 27th day of January A.D. 1864. at the City of Chicago

Thomas. B Carter Clerk

assignment of Errors by Plaintiffs in Error and defendants below.

1. That the Court Erred in deciding that it had not the power to make said order made the 28th day of November 1863. to set aside & vacate the Judgment ordered the 14 November 1863. in favor of plaintiff below against the defendant below.

2. That the Court Erred in setting aside & vacating the order made the 28. day of November 1863. setting aside and vacating the Judgment ordered against the defendants below the 14 November 1863.

3. The Court Erred in rendering a Conditional Judgment against the defendants below in favor of the said Joseph H. Bradbury on the 7. day of October 1863.

4. The Court Erred in rendering a final Judgment against the defendants below as Garnishee of Henry N. Knights in favor of Joseph H. Bradbury the 14 day of November 1863.

5 The Court Erred in taking Jurisdiction of the said cause over the persons of the defendants for want of a personal service a summons of upon the defendants below as Garnishee of Henry N. Knights & service personal upon the defendants of the Scire facias to make final the Conditional Judgment in favor of Joseph H. Bradbury against the defendants below.

And now the said Joseph H. Redbay defendant in Error comes by Herbert Rich & Shepard his attorneys & says that the matters & things assigned for Error there is no Error in the foregoing and amended record and proceedings wherefore he prays that the judgment & the court below may be affirmed and for his costs

Herbert Rich & Shepard
Attorneys for Defendant in Error

U. S. 89

Supreme Court

The United States Ex. Co
Garnishee of
Henry W. Knights
Plff in Error
vs.
Joseph H. Bradbury

Filed March 28. 1864
C. Leland
Clk