

12967

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

# Supreme Court of Illinois

Collins

---

vs.

Tuttle et al

---

71641  7

STATE OF ILLINOIS,

SUPREME COURT.

Third Grand Division

88

280

*Richard*

12967



# State of Illinois, Supreme Court,

THIRD GRAND DIVISION.

APRIL TERM. 1860.

## ERROR TO McLEAN.

Page of Record. MARTIN COLLINS, Plaintiff in Error,

vs.

1 ELIJAH G. TUTTLE & OTHERS, Defendants in Error.

### ABSTRACT OF RECORD.

This was an attachment suit commenced in McLean Circuit Court by defendants in error against plaintiff in error, as a non-resident.

On the 2d June, 1857, a proper affidavit in attachment was made and filed, and on the same day an attachment bond was made and filed in the Clerk's office of said Circuit Court, said bond being in the words and figures following :-

2 "Know all men by these presents, that we, Joseph S. Miller, agent for Tuttle, Perley, & Smith as principals, and William H. Hanna as security, of the County of McLean and State of Illinois, are held and firmly bound unto Martin Collins in the penal sum of nine hundred dollars, for the payment of which, well and truly to be made, we and each of us bind ourselves, our heirs, executors, and administrators, jointly and severally, and firmly by these presents, sealed with our seals, and dated at Bloomington, this 2d day of June, A. D. 1857.

"The condition of the above obligation is such, that whereas the above bounden Joseph S. Miller hath, on the day of the date hereof, prayed an attachment at the suit of Elijah G. Tuttle, Rodney G. Perley, and Harvey W. Smith, partners of the firm of Tuttle, Perley, & Smith, against the estate of the above named Martin Collins, for the sum of \$434,85 and interest, and the same being about to be sued out, returnable on the 15th day of June inst., to the term of the Court then to be holden: Now, if the said Tuttle, Perley, & Smith shall prosecute the said suit with effect, or in case of failure therein, shall well and truly pay and satisfy the said Martin Collins, all such costs in said suit, and such damages as shall be awarded against the said Tuttle, Perley, & Smith, heirs, executors or administrators, in any suit or suits which may hereafter be brought for wrongfully suing out the said attachment, then the above obligation to be void, otherwise to remain in full force and effect. Taken and entered into the date first above written.

TUTTLE, PERLEY, & SMITH,

WM. McCULLOUGH, Clerk,  
by JNO. N. LARRIMORE, Deputy.)

per J. S. MILLER, { L.S. }  
W. H. HANNA, { L.S. }"



3 & 4 On the said 2d June, a proper writ of attachment issued and was  
5 levied on real estate, and a return of "not found" as to plaintiff in  
error. And at the June term of said Circuit Court the cause was  
continued.

At the September term, 1857, to-wit: on the 7th day of September,  
defendants in error made proof of publication of notice to plaintiff in  
error, by the following certificate, viz:

6 "This may certify that the annexed notice has been published in  
four consecutive numbers of the Weekly PANTAGRAPH, a public news-  
paper printed in Bloomington, McLean County, Illinois, the first pub-  
lication being on the 16th day of June, 1857.

Wm. E. FOOTE, Proprietor."

To which certificate a copy of a printed notice in proper form was an-  
nexed.

7 On the 8th day of September, 1857, on motion defendants in error  
were allowed to file a declaration.

8 & 9 And on the 9th day of September, defendants in error filed their  
10 declaration in proper form, with copy of the instrument sued on.

And on said 9th day of September, 1857, said Circuit Court ren-  
dered judgment against plaintiff in error by default.

17-19

Collins vs. Tuttle & others

Abstract

Filed Aug. 30. 1837  
L. Deland  
Clerk

And on said 31st day of September 1837, said Circuit Court rendered judgment against plaintiff in error by decree.  
And on said 31st day of September 1837, said Circuit Court rendered judgment in favor of plaintiff with costs of the instrument and on.  
And on the 31st day of September defendants in error filed their  
were allowed to file a declaration.  
On the 31st day of September 1837, on motion defendants in error  
next.  
To which certificate a copy of a printed notice in proper form was in-  
flection point on the 10th day of June 1837.  
before printed in the Illinois State Gazette, Illinois the first pub-  
four consecutive numbers of the Weekly Examiner a public notice  
a notice in the Illinois State Gazette and in the Illinois State Gazette  
error in the following sentence:  
defendants in error may be in possession of notice to plaintiff in  
At the September term 1837, on the 14th day of September  
continued.  
error. And as the same was said Circuit Court the error was  
levied on real estate, and as it was not found as to plaintiff in  
On the said 31st day of September 1837, said Circuit Court rendered  
judgment against plaintiff in error by decree.



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

To the Sheriff of the County of McLean Greeting :

Because, In the record and proceedings, and also in the rendition of the judgment of a plea which was in the Circuit Court of McLean County, before the Judge thereof, between Elijah G. Tuttle, Rodney G. Perley & Harvey W. Smith plaintiffs and Martin Collins

defendant, it is said that manifest error hath intervened, to the injury of the said Martin Collins

as we are informed by his complaint, the record and proceedings of which said judgment we have caused to be brought into our Supreme Court of the State of Illinois, at Ottawa, before the Justices thereof, to correct the errors in the same, in due form and manner, according to law; Therefore, We Command You, That by good and lawful men of your County, you give notice to the said Elijah G. Tuttle, Rodney G. Perley & Harvey W. Smith

that they be and appear before the Justices of our said Supreme Court, at the next term of said Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April next, to hear the records and proceedings aforesaid, and the errors assigned, if they shall see fit; and further to do and receive what said Court shall order in this behalf; and have you then there the names of those by whom you shall give the said Elijah G. Tuttle, Rodney G. Perley & Harvey W. Smith notice, together with this writ.

Witness, The Hon. JOHN D. CATON, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 30<sup>th</sup> day of August in the Year of Our Lord One Thousand Eight Hundred and Fifty-nine

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





<sup>17</sup>  
Martin Collins  
vs

Elizabeth Tuttle et al.

Seinfacius

Filed Sept. 22. 1859.  
Shelton  
Ch.

Filed Sept. 22. 1859  
L. Leland  
clerk

Sh Martin Munnick Defendants (not found)  
in May County Sept 21<sup>st</sup> 1859 - Dec 1 - 10 =  
11 months stop  
By Geo Parker Esq.





State of Illinois = }  
LaSalle County } ss.

William W. Orme being first duly  
sworn says & swears that as he  
is informed & believes Elijah G.  
Tuttle, Rodney G. Perley and Harvey  
W. Smith reside in S.<sup>t</sup> Louis in the  
State of Missouri - and are citizens  
of said State of Missouri -  
And further saith not -

Subscribed & sworn to } William W. Orme  
before me Aug 30 / 54 }



17  
Martin Collins

vs  
Elihu G. Tuttle & Asks

---

Off Dnt.

Filed Aug. 30. 1837

L. Leland  
Clerk

STATE OF ILLINOIS: *Supreme Court within and for the Third Grand Division of said State, ss.*—Martin Collins, plaintiff in error, *vs* Elijah G. Tuttle, Rodney G. Perley, and Harvey W. Smith, defendants in error  
—Error to McLean County Circuit Court.

**I**T appearing by affidavit on file in the clerk's office of said Supreme Court, in the above entitled cause, that Elijah G. Tuttle, Rodney G. Perley, and Harvey W. Smith, the above named defendants in error, are non-residents of the State of Illinois, and without the reach of the process of said Supreme Court, and the said Martin Collins having duly sued out of said Supreme Court, a writ of error to reverse a judgment obtained by the said Elijah Tuttle, Rodney G. Perley, and Harvey W. Smith, against him, the said Martin Collins, in the Circuit Court of McLean County, which writ of error is now pending in said Supreme Court, and a writ of *scire facias* having been duly issued herein, returnable on the first day of the next term of said Supreme Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April, A. D. 1860.

Now you, the said Elijah Tuttle, Rodney G. Perley, and Harvey W. Smith, the said defendants in error, whose non-residence appears as above, are hereby notified to be and appear before the Justices of said Supreme Court, at the next term of said Supreme Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April, A. D. 1860, to hear the record and proceedings of said Circuit Court brought into said Supreme Court on return of said writ of error, and the errors assigned, if you shall see fit; and further to do and receive what said Supreme Court

—ans ou1 no uouam

L. LELAND, Clerk.  
T. in Error. sep3



STATE OF ILLINOIS: Supreme Court within and for the Third Grand Division of said State, ss.—Martin Collins, plaintiff in error, vs Elijah G. Tuttle, Rodney G. Perley, and Harvey W. Smith, defendants in error  
—Error to McLennan County Circuit Court.

IT appearing by affidavit on file in the clerk's office of said Supreme Court, in the above entitled cause, that Elijah G. Tuttle, Rodney G. Perley, and Harvey W. Smith, the above named defendants in error, are non-residents of the State of Illinois, and without the reach of the process of said Supreme Court, and the said Martin Collins having duly sued out of said Supreme Court, a writ of error to reverse a judgment obtained by the said Elijah Tuttle, Rodney G. Perley, and Harvey W. Smith, against him, the said Martin Collins, in the Circuit Court of McLennan County, which writ of error is now pending in said Supreme Court, and a writ of *seire facias* having been duly issued herein, returnable on the first day of the next term of said Supreme Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April, A. D. 1860.

Now you, the said Elijah Tuttle, Rodney G. Perley, and Harvey W. Smith, the said defendants in error, whose non-residence appears as above, are hereby notified to be and appear before the Justices of said Supreme Court, at the next term of said Supreme Court, to be holden at Ottawa, in said State, on the first Tuesday after the third Monday in April, A. D. 1860, to hear the record and proceedings of said Circuit Court brought into said Supreme Court on return of said writ of error, and the errors assigned, if you shall see fit; and further to do and receive what said Supreme Court

—GUS DUN HO. HANAM. L. LELAND, Clerk.  
T. in Error. sep3

State of Illinois }  
LaSalle County } ss.

I, William Osman, printer and publisher of the "Ottawa Free Trader" a public newspaper printed and published at Ottawa in said County and State, do hereby certify that the

annexed notice has been published for four successive weeks in four consecutive numbers of said newspaper. The first insertion of said notice being on the 3<sup>d</sup> day of September A.D. 1859 in said newspaper—

Given under my hand at Ottawa this 17<sup>th</sup> day of April 1860 Wm Osman  
Printer & Publisher of Ottawa Free Trader  
Printers fees \$3.50—  
Rec<sup>d</sup>. payment of Smith & Osme  
W Osman



State of Illinois }  
Salle County } ss.

William Orman being first  
duly sworn says and swears that the  
annexed notice has been published for  
four consecutive weeks in the Ottawa

Free Trader a public newspaper  
published in said County and State.  
And that the first insertion of said notice  
in said paper was on the 3d day of  
September AD. ~~1860~~ 1859

And that affiant mailed a copy of  
said notice to each of said defendants  
and also a copy to them jointly by their proper names  
on or about the 10th day of February, 1860  
to them at St. Louis in the State of Missouri

And that said notice was so distinct-  
ly marked as to call attention thereto.

And further says not -

Subscribed & sworn to before me } Wm Orman  
this 17th day of April AD. 1860 - }

J. C. Champion  
Judge of the Salle County  
Court, Illinois



Superior Court, 3<sup>d</sup> Division  
No. 67

Collins

vs.

Tuttle & others

Certificate of Publication  
& affidavit of mailing  
notice —

Filed April 17. 1860  
L. Leland  
Clerk



Martin Collins      pff } the Supreme  
① C. G. Tuttle & others depts } Court  
                                             } App Term 1860.

Reply to Points made by the  
Plaintiff in Error

The two first points relate to irreg-  
ularities in the form and substance  
of the Attachment Bond -

1st That it is not entitled of any  
Court & fails to show from what  
Court it issued or to what returnable.

p. 2,      A Sufficient answer to this  
is, that the affidavit which imme-  
diately preceded the Bond is duly  
and regularly entitled of the proper  
Court &c. It would have been a  
mere work of supererogation to  
have repeated it, in connection  
with each paper filed in the cause  
Objections to ~~the~~ informalities in relation  
to the execution of the Bond - Nor  
the other one, in relation to the  
Court &c (if it existed) can not  
be for the first time raised in  
this Court -



There was nothing informal or irregular in the Bond or its Execution which might not have been amended in the Circuit Court.

*Micro v. Bursh. 3 Scam. 21.*

*Monis v. Trustees &c. 15 Ill. 268*

These decisions are decisive of these questions.

The case of *Lorenson v. Gentman 2 Scam 17* is not law, and is in direct conflict with the decisions before cited—and with the 8th Sec. of the Attachment Act. *Purple, Hal. p. 98.*

The Plaintiff's 3rd point is that the Certificate of Publication is insufficient.

All the Objections raised to the Sufficiency of the Publication—are entirely obviated, (if they exist) by the decision of this Court in the case of *Pierce v. Carttoun 12 Ill. 358.*

In this case it is decided that when the Record in an attachment—



case shows, that the Notice was published in time, It may be shown by Parole in aid of the Publication, the place and manner of it; and this Court will presume that the necessary proof was made on the Circuit.

The 4<sup>th</sup> Point is, that it was Error to render Judgment by Default at the Sept. Term, declaration not having been filed Ten Days before the term.

This is altogether a mistake - Counsel have probably been misled by the case of White vs Hoague 18<sup>th</sup> Ill. 150 - In that case the defendant appeared & moved to Dismiss for want of a declaration - The Court below sustained the Motion - This Court decided that this was Error because the Plaintiff had the term in which to ~~enter~~<sup>file</sup> his declaration - This decision was all the Court had to make, being the only question in the case.



The decision was correct: And as to the residue of the remarks made by the Court - as being applicable to a case of the kind before it, where an appearance is entered by the Defendant - They are also strictly & technically in accordance with the law -

But a default may be taken in any case where service is made ten days before Court, and a declaration has been filed - for any length of time, unless the defendant shall appear and make an application for a continuance.

The Provision of the 8<sup>th</sup> Sec of the Practice act. Purple, Stat. p. 821, is that when declaration is not filed 10 days before the term "The Court on Motion of the Defendant shall Continue the Cause"

Unless such motion is made a default is entered as of course, the continuance is a privilege merely of the Defendant; It is at his option whether he will or not avail himself of the same -



The Attachment cases the Plaintiff is  
Specially entitled to his default after  
filing his declaration at the return  
Term of the attachment  
Purple Ital. p 99. 8. 13. 14 & 15

The 15<sup>th</sup> Sec. provides - That "if the attach-  
ment is return executed - or the Estate  
attached is not replevied, or defense  
shall not be made, as this Chapter  
directs, the Plaintiff shall be entitled  
to Judgment etc.,

I think it is clear, that in  
all cases whether commenced by  
attachment or otherwise, the Plain-  
tiff having 10 days service, and  
having filed his declaration is  
entitled to his default.

And such I understand  
has been the uniform practice of  
the profession, and their understand-  
ing of the law -

M. P. P.  
for left in Error



Martin 19

67

Martin Collins

21

Elijah G. Tuttle  
& others.

---

argument

Filed April 21, 1868  
L. Leland  
Clerk



STATE OF ILLINOIS, }  
SUPREME COURT,

To the Clerk of the *Circuit* Court for the County *McLean* Greeting:

Because, In the record and proceedings, as also in the rendition of the judgment of a plea which was in the *Circuit* Court of *McLean* County, before the Judge thereof, between *Elijah G. Tuttle, Rodney G. Perley & Harvey W. Smith* plaintiffs and *Martin Collins*

defendant, it is said manifest error hath intervened, to the injury of the aforesaid *Martin Collins*

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

Witness, The Hon. John D. Caton, Chief Justice of our said Court, and the Seal thereof, at Ottawa, this 30<sup>th</sup> day of *August* in the Year of Our Lord one thousand eight hundred and fifty-nine

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



17-19  
Martin Collins

vs

Elijah G. Tuttle vs

Writ of Error

Filed Aug. 30. 1857  
L. Leland  
clerk





Page-1-

Pleas Continued and held at the Court house in Bloomington in the County of McLean and State of Illinois before the Hon. David Davis Judge of the Circuit Court of said County in a certain action therein pending wherein Elijah G. Tuttle, Rodney G. Peley & Harvey W. Smith were plaintiffs & Martin Collins was Defendant.

State of Illinois ss  
McLean County ss Be it remembered that on the 2<sup>d</sup> day of June A.D. 1857 came Elijah G. Tuttle, Rodney G. Peley & Harvey W. Smith, by Hanna & Scott their Attorneys and filed in the office of the Clerk of the Circuit Court of said County a Bond for costs, an affidavit and an attachment Bond, which said Bond for costs, affidavit and attachment Bond, was in words and figures as follows, to wit.

Elijah G. Tuttle, Rodney G. Peley  
& Harvey W. Smith

Bond for Costs

or  
Martin Collins

In the McLean Circuit Court.

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

W. H. Hanna.

State of Illinois ss In the McLean Circuit Court.

Affidavit

McLean County ss

June Special Term. 1857.

Joseph S. Miller agent of Elijah G. Tuttle, Rodney



2 -

G. Peley. & Harry W. Smith. partners under the name & style of Tuttle. Peley & Smith. being duly sworn on oath saith that one Martin Collins is justly indebted to said firm of Tuttle. Peley & Smith in the sum of Four Hundred & thirty four Dollars & Eighty five Cents and interest thereon as endorser to them of a certain note for that sum executed by one John M. Stilwell to said Martin Collins. dated October 11<sup>th</sup> 1855. and due six months after date. and afterwards endorsed by said Collins to said Tuttle. Peley & Smith = said affiant further says that said Martin Collins is not a resident of the State of Illinois and therefore prays an attachment against the property of said Collins.

J. S. Miller.

Subscribed & sworn to before me this  
2<sup>d</sup> day of June. 1857

W<sup>m</sup> McCullough. Clerk.

By Jno. N. Lawrence Deputy

Attachment

Bond

Know all men by these presents that we Joseph S. Miller. agent for Tuttle. Peley & Smith as principals and William B. Hanna as security of the County of McLean and State of Illinois. are held and firmly bound unto Martin Collins in the penal sum of Nine Hundred Dollars. for the payment of which well and truly to be made we and each of us bind ourselves. our heirs. executors & administrators. jointly and severally and firmly by these presents. sealed with our seals and dated at Bloomington this 2<sup>d</sup> day of June. Anno Domini One thousand Eight Hundred and fifty seven.

The condition of the above obligation is such. that whereas the above bounden Joseph S. Miller. hath. on the day of the date hereof prayed an attachment at the suit of Elijah G. Tuttle. Rodney G. Peley



& Harvey W. Smith. partners of the firm of Tuttle, Pease & Smith. against the Estate of the above named Martin Collins for the sum of Four Hundred & thirty four  $95\frac{1}{100}$  Dollars & interest and the same being about to be sued out returnable on the 15<sup>th</sup> day of June Inst. to the term of the Court then to be holden. Now if the said Tuttle, Pease & Smith shall prosecute the said suit with effect: or in case of failure therein shall well and truly pay and satisfy the said Martin Collins all such costs in said suit and such damages as shall be awarded against the said Tuttle, Pease & Smith, heirs, executors, or administrators, in any suit or suits, which may hereafter be brought for wrongfully suing out the said attachment then the above obligation to be void, otherwise to remain in full force and effect. Taken and entered into the date first above written.

W<sup>m</sup>. McCullough. Clerk      Tuttle, Pease & Smith  
By Jno. N. Larrimore. Deputy      pr. J. S. Miller  
W. H. Hanna

And thereupon on said 2<sup>d</sup> day of June. A. D. 1857. issued out of said Clerk's office. a writ of Attachment in words and figures as follows. to wit

State of Illinois } ss  
McLean County } The People of the State of Illinois.

writ of attachment to the Sheriff of said County. Greeting=

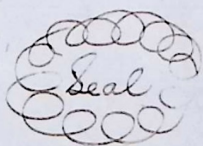
Whereas Joseph S. Miller. agent for Tuttle, Pease & Smith. has complained on oath to W<sup>m</sup>. McCullough. Clerk of the Circuit Court of McLean County. that Martin Collins is justly indebted to the said Tuttle, Pease & Smith. to the amount of Four Hundred & thirty four Dollars and Eighty five cents & interest



4 =

and oath having also been made that the said Martin Collins is not a resident of the State of Illinois. And the said Joseph S. Miller having given Bond and Security according to the directions of the act in such case made and provided.

We therefore command you. that you attach so much of the Estate. real or personal of the said Martin Collins to be found in your County as shall be of value sufficient to satisfy said Debt and costs according to the Complaint and such Estate so attached in your hands to secure. or so to provide that the same may be liable to further proceedings thereupon according to law at a Court to be holden at Bloomington for the County of McLean on the 15<sup>th</sup> day of June next Inst. So as to compel the said Martin Collins to appear and answer the Complaint of the said Tuttle Peiley & Smith. And that you also Summon \_\_\_\_\_ as Garnishee to appear at the said Court on said \_\_\_\_\_ day of \_\_\_\_\_ next then and there to answer what may be objected against \_\_\_\_\_. When and where you shall make known to said Court how you have executed this writ. And have you then and there this writ



Witness. W<sup>m</sup>. McCullough Clerk of said Circuit Court and the seal thereof hereto affixed at Bloomington this 2<sup>d</sup> day of June A.D. 1857  
W<sup>m</sup>. McCullough. Clerk.

By Jno. H. Larrimore Deputy

Which said writ. was by the Sheriff of said County returned into said Clerk's office endorsed as follows. to wit.

Levied this writ on the following Real Estate. to wit. The East half of Lot Eight and six feet off of the north end of the



5 -

East half of Lot nine in Block Thirty five in Allin, Gridley  
& Pricketts Addition to Bloomington. June 2<sup>d</sup> 1857.

Shffs. fees Lvy & Ret 60

J. H. Moore. Shff.

Certificate  $\frac{25}{\$85}$

By Geo. Parke. Deputy

The within named Martin Collins is not found in my County.  
June 2<sup>d</sup> 1857. J. H. Moore. by Geo. Parke. Deputy

And thereupon at the Special June Term of said Court. to wit  
on the 27<sup>th</sup> day of June. A. D. 1857. the following order was made  
in this cause as appears of record. to wit.

Tuttle. Peley & Smith

vs

Martin Collins

In Attachment

This day. It appearing to the Court that  
no publication has been made herein. therefore. It is ordered that  
this cause be continued

And thereupon afterwards. to wit. at the September. Term of  
said Court. to wit on the 7<sup>th</sup> day of September 1857. came the  
plaintiffs by their attorneys and filed herein a Certificate of  
Publication in words and figures as follows. to wit.

Publication State of Illinois } In the McLean Circuit Court. To the September  
McLean County } ss Term. 1857

Elijah G. Tuttle. Rodney G. Peley & Henry W. Smith  
of the firm of Tuttle. Peley & Smith.

In Attachment

vs

Martin Collins



6

Notice is hereby given to the said Martin Collins that a writ of Attachment issued out of the Clerks office of the McLean Circuit Court on the second day of June A.D. 1857. at the suit of said Tuttle, Peley & Smith. and against the Estate of the said Martin Collins for the sum of \$434.85 and interest thereon. and that said writ has been returned executed. and that the above entitled suit is now pending in said Circuit Court.

Now unless you the said Martin Collins shall personally be and appear before said Court on the first day of the next term thereof. to be holden at the Court house in Bloomington on the first Monday of September A.D. 1857. and give bail or plead or otherwise answer herein. judgment will be entered against you and the estate attached will be sold.

Witness my hand at Bloomington this 16<sup>th</sup> day of June A.D. 1857.

W<sup>m</sup>. McCullough. Clerk.

Wanna & Scott. Attorneys for Plaintiffs.

Printers fees. \$4<sup>50</sup>/<sub>100</sub>

This may certify that the annexed notice has been published in four consecutive numbers of the "Weekly Pantagraph" a public newspaper printed in Bloomington. McLean County, Illinois. the first publication being on the 16<sup>th</sup> day of June. 1857.

Rec'd. paymt. fr. Wanna & Scott.

W<sup>m</sup>. E. Foote.

Proprietor.

And thereupon afterwards at said September term. further proceedings were had herein as appears of record. to wit.

September 8<sup>th</sup> 1857.



7

Juttle. Peirley & Smith

In Attachment.

Order of Court.

Martin Collins

This day come the said plaintiffs by their Attorneys. and make due proof the Court here of the publication of notice of the pendency of this suit according to the Statute in such case made and provided. And on motion said Plaintiffs are allowed to file their Declaration herein.

And thereupon afterwards. on the 9<sup>th</sup> day of September in the year last aforesaid. came said plaintiffs by their Attorneys. and filed herein their Declaration and Copy of note sued on. which Declaration. and Copy of note sued on are in words and figures as follows. to wit.

Declaration State of Illinois In the Circuit Court of said County.  
McLean County June Special Term. A.D. 1857.

Elijah G. Juttle. Rodney G. Peirley and Henry W. Smith. partners under the name of Juttle. Peirley & Smith. plaintiffs in this suit. by Hanna & Scott. their Attorneys. Complain of Martin Collins. Defendant. in a plea of Assumpsit.

For that whereas. John M. Stilwell. heretofore to wit. on the 11<sup>th</sup> day of October. in the year of our Lord One thousand Eight Hundred and fifty five. at Bloomington. to wit. at the County of McLean and State of Illinois. by the name \_\_\_\_\_ made his certain note in writing. commonly called a promissory note. bearing date the day and year last aforesaid and then and there delivered the said note to the said Defendant. by which said note. the said John M. Stilwell promised to pay to the



order of the said Defendant. six months after the date of said note. which  
 period hath now long since elapsed. the sum of Four Hundred and thirty  
 four Dollars and Eighty five Cents. for value received. And afterwards  
 to wit. on the day and year aforesaid. and at the place aforesaid. the said  
 Defendant. by his writing on the Back of said note. for value received  
 assigned and delivered the said note to the said plaintiffs. And the  
 said John M. Stilwell did not pay the amount of the said note to the said plain-  
 tiffs. although the same was presented to him. to wit. on the same day the  
 said note became due. of all which the said Defendant had notice.  
 And the said plaintiffs came that afterwards. to wit. on the 30<sup>th</sup> day of  
 December A.D. in the year A.D. 1856. the said plaintiff commenced a  
 suit in the Circuit Court of the said County of McLean against the said  
 John M. Stilwell on the said note and prosecuted the said John M.  
 Stilwell to insolvency. as will more fully appear by the records of this  
 Court. of all which the said Defendant then and there had notice.  
 to wit. at the County of McLean and State of Illinois. by reason whereof and  
 by force of the Statute in such case made and provided. the said Defen-  
 dant became liable to pay to the said plaintiffs the said sum of money  
 in the said note specified. according to the tenor and effect of the said  
 note. and being so liable. the said Defendant in consideration thereof  
 afterwards. to wit. on the same day and year and at the place aforesaid  
 undertook and then and there faithfully promised the said plaintiff  
 well and truly to pay unto the said plaintiffs the said sum of money  
 in the said note specified. according to the tenor and effect of the said  
 note. And whereas also. the said Defendant afterwards. to wit. on the first  
 day of December. in the year of our Lord One thousand Eight Hundred  
 and fifty six. at the place aforesaid. was indebted to the said Plain-  
 tiffs in the sum of Five Hundred Dollars. lawful money of the United  
 States of America. for money before that time lent and advanced by



the said plaintiffs to the said Defendant at the special instance and request of the said Defendant. And for other money before that time by the said plaintiffs laid out and expended for the said Defendant And for other money by said Defendant before that time had and received to and for the use of the said plaintiffs. 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 plaintiffs well and truly to pay unto the said plaintiffs the said sum of money in this 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 plaintiffs. of and concerning divers other sums of money before that time due and owing from the said Defendant to the said plaintiffs. and then and there being in arrear and unpaid and upon such accounting the said Defendant then and there was found to be in arrear and indebted to the said plaintiffs in the further sum of Five Hundred Dollars of like lawful money as aforesaid. and being so found in arrear and indebted to the said plaintiffs. 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 plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned when the said Defendant should be thereunto afterwards requested. Nevertheless the said Defendant (although often requested to wit. on the day when the said note became due and payable according to the tenor and effect thereof. and often times since to wit. at the place aforesaid) has not yet paid the said several sums of money above mentioned. or any or either of them or any part thereof to the



said plaintiffs. but to pay the same or any part thereof to the said plaintiffs the said Defendant has hitherto altogether refused and still do refuse to the damage of said plaintiffs Five Hundred Dollars. and therefore the said plaintiffs bring suit &c.

Hanna & Becht. Plaintiffs Attorneys.

And thereupon afterwards. at said

Copy of note sued on

\$434  $\frac{85}{100}$

Bloomington Oct. 11<sup>th</sup> 1855.

Six months after date I promise to pay to the order of Martin Collins. Four Hundred and thirty four &  $\frac{85}{100}$  Dollars. value received  
John M. Stillwell.

Endorsed on the back of said note. as follows.

Martin Collins.

And thereupon. afterwards. at said September Term of said Circuit Court. to wit. on the 9<sup>th</sup> day of September. A.D. 1857. This cause came on for hearing before said Court and final judgment was rendered herein. as appears of Record as follows. to wit.

Elijah G. Tuttle. Rodney G. Peleg.  
& Harvey W. Smith

vs

Martin Collins

In Attachment.

And now again come said plaintiffs by their attorneys. and said Defendant being three times solemnly called. comes not but herein wholly makes default. Thereupon it is adjudged by the Court that said plaintiffs have sustained damages



11 - by reason of the non performance of certain promises in their Declaration mentioned. But the amount thereof being unknown to the Court here therefor the Clerk is ordered to assess the same. And the Clerk having assessed the damages aforesaid. reports the same in writing to the Court here. which report is by the Court approved and ordered to be filed, Therefor it is considered by the Court that said plaintiffs recover of said Defendant the sum of Four Hundred and Seventy one Dollars and sixty seven cents (\$471.67). their damages aforesaid in form aforesaid assessed. and likewise their cost in this behalf expended. and that they have execution therefor.

State of Illinois

ss

McLean County I, W<sup>m</sup>. McCullough, Clerk of the Circuit Court in and for said County do hereby certify that the foregoing is a True and complete transcript of the files and Record pertaining to the foregoing cause. as the same appears in my office.

Witness my hand and the seal of said Court hereto affixed this 14<sup>th</sup> day of July A.D. 1857

W<sup>m</sup>. McCullough. Clerk

By Luman Burr. Deputy



Clerks fees. \$3.75. Paid by W. W. Arme

L. Burr. Deputy Clerk



And thereupon the said Martin Collins by Swett & Orme his Attorneys upon the record above written assigns the following errors:

1<sup>st</sup> There was no sufficient proof before the Court of the publication of the notice or the length of time the same was published, to authorize the Court to take a default against plaintiff in error

2<sup>d</sup> - The attachment Bond is informal & defective

3<sup>d</sup> The certificate ~~of proof~~ of publication entirely fails to show a compliance with the Statute in order to entitle it to rank as proof -

4<sup>th</sup> It was error to render a judgment by default at Sept. Term 1857 the declaration & copy of the instrument sued on not having been filed ten days before the Session of the Court =  
Wherefore by reason of said manifest errors the judgment aforesaid should be reversed and wholly held for naught - &c.

Swett & Orme  
for pl'tff. in error.

And now comes the defendant in error and says that in the Record & proceedings and in the rendition of the judgment aforesaid there is no error and they pray that the Judgment may be affirmed

Apr 18<sup>th</sup> 1860

M. B. Boyd  
for def't in error



Supreme Court of Illinois  
3<sup>d</sup> Grand Division

Martin Collins

vs.

Elijah G. Tuttle. others

} Error to McLean.

We do hereby enter ourselves security for  
costs in this Cause and acknowledge our-  
selves bound to pay or cause to be paid  
all costs which may accrue in this action  
either to the opposite party or to any of the  
officers of this Court in pursuance of the  
laws of this State -

Dated this 18<sup>th</sup> day of July 1859 -

Swett & Orme

State of Illinois }  
McLean County } ss.

William W. Orme being first duly  
sworn says and swears that Elijah G. Tuttle  
Rodney G. Perley and Harvey W. Smith are  
not residents of the State of Illinois - as af-  
- frank is informed and believes -

Subscribed & sworn to before me  
July 18 1859 -

William W. Orme

Witness. W<sup>m</sup> McCullough, Clerk  
of Circuit Court of said County  
& the seal thereof hereto affixed  
the date above written.

W<sup>m</sup> McCullough, Clerk  
By L. Burr Deputy





167  
Martin Collins  
-  
                    plff. in sm  
vs.

E. G. Tuttle others

Record & receipt of  
Exors & Bond for costs  
& affidavit of non. residence

CLK's fee for record  
\$3.75 =

Filed Aug. 30. 1859  
L. de laud  
CLK